

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF RICHMOND - CRIMINAL TERM - PART: 5
3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

6 ANTHONY RUCANO,

7 Defendant.

8 -----X
9 Indict. No. 270/2009 18 Richmond Terrace
10 Staten Island, New York
11 September 9, 2010

12 B E F O R E:

13 HONORABLE STEPHEN J. ROONEY,

14 Justice, and a jury.

15 (Appearances same as previously noted.)

16 ELAINE FORLENZA, RPR
17 OFFICIAL COURT REPORTER

18 -----
19 THE CLERK: Case on trial, People versus
20 Rucano. All parties entered the well.

21 THE COURT: Are all the five sworn jurors
22 present?

23 THE CLERK: Yes. Same appearances as
24 yesterday.

25 (Discussion held off the record at the
bench.)

THE CLERK: Defendant's present. The
attorneys are present.

1 THE COURT: I am told that Juror Number 4
2 is feeling ill. She's here. She went to the
3 doctor this morning; is that right?

4 THE CLERK: Yes, sir.

5 THE COURT: Some kind of stomach virus.
6 She saw a doctor but she is here. You want me to
7 bring her in?

8 What's going on?

9 MR. LAMB: I'm sorry, I have asked -- for
10 the record the defendant's wife was just added as
11 a possible witness to the witness list yesterday
12 afternoon. She is in the courtroom.

13 I have not had an opportunity to explain
14 to her as a witness she can no longer remain in
15 the courtroom. The defendant was just giving her
16 some lunch money and I was passing that to her if
17 I could have one second.

18 (Short pause.)

19 THE COURT: You want me to bring in
20 Number 4?

21 MS. RAJESWARI: Yes.

22 THE COURT: Mr. Lamb, shall I bring her
23 in?

24 MR. LAMB: Sure.

25 THE COURT: Bring in Number 4. See how

1 she is feeling.

2 (Short pause.)

3 THE COURT OFFICER: Ready, your Honor?

4 THE COURT: Yes.

5 (Juror Number 4 entered courtroom.)

6 THE COURT: This is Ms. Rippa, right?

7 You could just stop right there. I was asking --

8 I am told you weren't feeling well.

9 JUROR NO. 4: Much better.

10 THE COURT: If you feel ill and you want
11 to go home.

12 JUROR NO. 4: Just a few times when I got
13 up I had a feeling a little bit nauseous.

14 THE COURT: Are you okay now?

15 JUROR NO. 4: So far okay. I had some
16 tea so maybe it was something. So far so good.

17 THE COURT: Thank you. I will let you go
18 back to the jury room. We are going to bring the
19 other panel members over and then we'll bring the
20 sworn jurors in and resume.

21 JUROR NO. 4: Thank you very much.

22 THE COURT: Okay, get the panel over and
23 we are going to have to seat the sworn jurors
24 separate.

25 THE CLERK: Sergeant, there are 39

1 prospective jurors across the street.

2 THE COURT: Bring them over please.

3 (Pause in proceedings.)

4 THE COURT: The sworn jurors have been in
5 there for over an hour. They want a break. When
6 they're finished with their break, we'll start up.

7 (Pause in proceedings.)

8 THE CLERK: Prospective panel entering.

9 COURT OFFICER: Are you ready for the
10 sworn jurors?

11 THE CLERK: Yes.

12 (Sworn jurors entered.)

13 THE CLERK: Case on trial continues. Do
14 both sides stipulate the presence of the first
15 five sworn jurors are present in the gallery front
16 row in order? People?

17 MR. KATCHEN: So stipulated.

18 THE CLERK: Defense?

19 MR. LAMB: So stipulated.

20 THE COURT: Good morning, welcome back. I
21 want to apologize for this delay. It had to do
22 with other cases on my calendar. It is my fault.
23 I miscalculated. But I want to stress it is not
24 the fault of the parties in this case that is the
25 delay. So don't hold it against them. It is my

1 fault. I apologize and thank you for your
2 patience.

3 So when you hear your name called, step
4 up, have a seat where directed and we'll resume
5 selection.

6 THE CLERK: Seat Number 1, step up
7 Renata Basman. B A S M A N.

8 Seat two, Janice Longo. L O N G O.

9 Seat three, Rita Delapena.
10 D E L A P E N A.

11 Seat four, Anthony Dambrosio.
12 D A M B R O S I O.

13 Five, Thomas Mani. M A N I.

14 Six, Sandra Valenta. V A L E N T A.

15 Seven, Theodore Horlevein.

16 H O R L E V E I N.

17 PROSPECTIVE JUROR: It's Valenti with an
18 i. V A L E N T I.

19 THE COURT: He did say A.

20 Seat eight, Edmund Orlando.

21 O R L A N D O.

22 Seat nine, Jennifer Ruzicka.

23 R U Z I C K A.

24 Ten, Linda Villafana. V I L L A F A N A.

25 Villafana. That's seat ten.

1 Seat eleven, Daniel Donadio.

2 D O N A D I O.

3 Twelve, Andrew Guido. G U I D O.

4 Thirteen, Stanley Wojnowski.

5 W O J N O W S K I.

6 Fourteen, Richard Derleth. D E R L E T H.

7 Derleth.

8 Fifteen, Patricia Totaram.

9 T O T A R A M.

10 Sixteen, Lucille Fuchs. F U C H S.

11 Sixteen prospective jurors seated.

12 THE COURT: Okay. My questions don't
13 change so things usually go a little quicker the
14 second time through.

15 Do any of you know the lawyers or the
16 defendant?

17 Yes, sir. Mr. Dambrosio.

18 PROSPECTIVE JUROR: Yes. In the
19 courtroom there was an attorney Manny Ortega. He
20 is my next door neighbor, good friend. I thought
21 I would have to mention that.

22 THE COURT: Mr. Ortega has nothing to do
23 with this particular case. Is there anything
24 about your friendship with Mr. Ortega that would
25 prevent you from being a fair juror?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Do any of you know the
3 lawyers or the defendant? I got no answer on
4 that.

5 I read a list of potential witnesses
6 yesterday. I will read it again if anybody wants
7 me to. The question is did you recognize any of
8 the names? Anybody want to hear the names read
9 again? Nobody. Okay.

10 Do any of you think you know anything
11 about this case apart from what you've heard here
12 yesterday?

13 Are any of you or anyone close to you,
14 again what I mean by that is close friends or
15 relatives involved in law enforcement in any
16 capacity?

17 I will just skip around here.

18 Ms. Ruzicka.

19 PROSPECTIVE JUROR: My brother was a
20 police officer. My uncle as well. My two
21 neighbors and a good friend.

22 THE COURT: You know the question. Is
23 there anything about these relationships,
24 friendships that would prevent you in terms of
25 your ability to be fair?

1 PROSPECTIVE JUROR: I'd have to say, yes.

2 THE COURT: Based on discussions I guess
3 you've had with them about what they do?

4 PROSPECTIVE JUROR: Um-hum.

5 MR. LAMB: I'm sorry. The answer was
6 yes?

7 THE COURT: She thinks it might affect
8 her ability to be fair. You could pursue that if
9 you want to.

10 Anyone else on this question?

11 Ms. Delapena.

12 PROSPECTIVE JUROR: My father was a
13 police officer and my brother was a police
14 officer.

15 THE COURT: Same question. Anything
16 about that that would affect you in terms of your
17 ability to be fair?

18 PROSPECTIVE JUROR: I don't think so.

19 THE COURT: Thank you.

20 Mr. Dambrosio.

21 PROSPECTIVE JUROR: My cousin is a police
22 officer and father-in-law is a retired police
23 officer.

24 THE COURT: Is that going to have any
25 affect on your ability to be fair?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Anyone else in first row?

3 Ms. Valenti.

4 PROSPECTIVE JUROR: Two cousins that are
5 cops and a detective.

6 THE COURT: Is that going to have any
7 bearing here in terms of your ability to be a fair
8 juror?

9 PROSPECTIVE JUROR: I don't think so.

10 THE COURT: Mr. Horlevein?

11 PROSPECTIVE JUROR: My son police
12 officer.

13 THE COURT: NYPD?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is that going to affect your
16 ability to be fair and impartial?

17 PROSPECTIVE JUROR: I don't think so.

18 THE COURT: Is that it in the first row?

19 I will go to the back row.

20 Ms. Fuchs.

21 PROSPECTIVE JUROR: I have a cousin
22 that's a court officer in Long Island.

23 THE COURT: You know if he works or she
24 -- he or she works in criminal term or civil term?

25 PROSPECTIVE JUROR: I am not sure.

1 THE COURT: You are not sure. Is there
2 anything about that that would affect your ability
3 to be fair or impartial?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Other hands?

6 Mr. Derleth.

7 PROSPECTIVE JUROR: I am a New York City
8 Correction Officer.

9 THE COURT: You are. How long have you
10 been a correction officer?

11 PROSPECTIVE JUROR: 28 years.

12 THE COURT: Okay. Are you working in a
13 City facility?

14 PROSPECTIVE JUROR: Riker's Island.

15 THE COURT: Is there anything about your
16 job, your background, your training, your
17 experience that would prevent you from being a
18 fair juror in a criminal case, fair to both sides?

19 PROSPECTIVE JUROR: I believe so.

20 THE COURT: You think it would?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: I will let the lawyers pursue
23 that if they want to.

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Anyone else?

1 Mr. Guido.

2 PROSPECTIVE JUROR: Aunt and best friend
3 cops, NYPD.

4 THE COURT: Same question. Would that
5 have any affect here?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Ms. Longo.

8 PROSPECTIVE JUROR: My son's best friend
9 is a District Attorney.

10 THE COURT: In Richmond County?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Here in Staten Island?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: May I ask this person's name?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: You know the last name?

17 PROSPECTIVE JUROR: Curiale.

18 THE COURT: Jeff Curiale. Do you know
19 him personally?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Is there anything about that
22 that would affect your ability to be fair and
23 impartial?

24 PROSPECTIVE JUROR: I don't think so.

25 THE COURT: He works for the same

1 District Attorney's Office as these two who are
2 sitting here. Knowing that would that have any
3 bearing on your ability to be fair and impartial?

4 PROSPECTIVE JUROR: I am not sure.

5 THE COURT: You are not sure. I will let
6 the lawyers talk to you about that if they want.

7 THE COURT: Any other hands?

8 Mr. Donadio.

9 PROSPECTIVE JUROR: Yes, I am a police
10 officer.

11 THE COURT: How long have you been a
12 police officer?

13 PROSPECTIVE JUROR: Four years.

14 THE COURT: Okay. Police officers are no
15 longer exempt from jury duty. Nobody is anymore.
16 I have been called for jury duty. Nobody is
17 exempt anymore so you are disqualified. But the
18 question is if you were selected as a juror do you
19 think you could be fair and impartial?

20 PROSPECTIVE JUROR: Absolutely.

21 THE COURT: Thank you. Anyone else?

22 Are any of you or anyone close to you
23 involved in the legal field in any way as a
24 lawyer, paralegal, employee of a law firm or
25 prosecutor's office? Anything of that sort?

1 Have any of you or anyone close to your
2 knowledge ever been the victim of a crime?

3 Ms. Delapena, could you tell me a little
4 bit about it?

5 PROSPECTIVE JUROR: Very close friend's
6 mother was raped in her own house.

7 THE COURT: How long ago was this?

8 PROSPECTIVE JUROR: I think about 16, 17
9 years ago.

10 THE COURT: Was anybody arrested in
11 connection with that?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Did you go to any court
14 proceedings?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Keeping in mind the nature of
17 the charges in this case do you think that would
18 affect your ability to be fair?

19 PROSPECTIVE JUROR: I am not really sure.
20 I think not. I couldn't really say for sure.

21 THE COURT: Other hands on this, crime
22 victim?

23 Mr. Dambrosio.

24 PROSPECTIVE JUROR: My sister was held up
25 at gunpoint while she worked at a register at a

1 grocery store. My father was brutally mugged
2 pretty bad and my mom was date raped when she
3 was 16.

4 THE COURT: How long ago were these
5 incidents approximately?

6 PROSPECTIVE JUROR: It would have been
7 when I was a teenager with my sister and my dad.
8 My mom was 16 at the time but she had told us the
9 story what happened.

10 THE COURT: Was anybody arrested in
11 connection with any of these incidents?

12 PROSPECTIVE JUROR: No. But my mom, it
13 happened to another young lady and he was
14 eventually arrested for the same type of crime.

15 THE COURT: Did you go to any court
16 proceedings?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Anything about these events
19 individually or collectively that would prevent
20 you from being a fair juror in this case?

21 PROSPECTIVE JUROR: It might.

22 THE COURT: It might.

23 PROSPECTIVE JUROR: Yes, hearing what we
24 heard yesterday.

25 THE COURT: Okay. Other hands on this,

1 crime victims?

2 Ms. Longo.

3 PROSPECTIVE JUROR: My niece was attacked
4 by her boyfriend.

5 THE COURT: Attacked?

6 PROSPECTIVE JUROR: By her boyfriend.

7 THE COURT: How long ago was this?

8 PROSPECTIVE JUROR: 23 years ago.

9 THE COURT: Was he arrested?

10 MR. LAMB: Yes.

11 THE COURT: Did you go to any court
12 proceedings?

13 PROSPECTIVE JUROR: Once.

14 THE COURT: Is there anything about that
15 event that would have any bearing here on your
16 ability to be fair?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you.

19 Other hands. Mr. Donadio.

20 PROSPECTIVE JUROR: I have an uncle that
21 was murdered.

22 THE COURT: Pardon?

23 PROSPECTIVE JUROR: I have an uncle that
24 was murdered.

25 THE COURT: How long ago was that?

1 PROSPECTIVE JUROR: About twenty years
2 ago.

3 THE COURT: Was anybody arrested?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Did you go to any court
6 proceedings?

7 PROSPECTIVE JUROR: A few.

8 THE COURT: Anything about that event
9 that would have any bearing here in terms of your
10 ability to be fair as a juror in this case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you.

13 Anyone else? Ms. Villafana.

14 PROSPECTIVE JUROR: Yes. My niece was a
15 victim of domestic abuse.

16 THE COURT: How long ago was this?

17 PROSPECTIVE JUROR: Five years.

18 THE COURT: Was there an arrest made in
19 that case?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Did you go to any court
22 proceedings?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Anything about that event
25 that would have any bearing in terms of your

1 ability to be fair?

2 PROSPECTIVE JUROR: I think so.

3 THE COURT: Anyone else on this question?

4 Crime victims? I will remind you we can talk
5 privately about anything.

6 The question is have you or anyone close
7 to you ever been a defendant in any kind of a
8 criminal proceeding? Nobody on this.

9 Ms. Villafana, you want to talk privately
10 about that?

11 PROSPECTIVE JUROR: My brother was
12 arrested and convicted.

13 THE COURT: Arrested?

14 PROSPECTIVE JUROR: Burglary.

15 THE COURT: How long ago was this?

16 PROSPECTIVE JUROR: Maybe 25 years ago.

17 THE COURT: Okay. Did you go to any
18 court proceedings?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Is there anything about that
21 event or experience that would have any bearing
22 here in terms of your ability to be fair?

23 PROSPECTIVE JUROR: Probably not.

24 THE COURT: Thank you.

25 Other hands. Mr. Guido.

1 PROSPECTIVE JUROR: My brother was
2 arrested several years ago for prescription drugs.

3 THE COURT: Did you go to any court --
4 Richmond County?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Anything about that's going
7 to have any affect on your ability to be fair?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Anyone else?

10 Ms. Totaram.

11 PROSPECTIVE JUROR: Can I speak privately
12 please?

13 THE COURT: Sure. We'll talk a little
14 later. Thank you.

15 Anyone else?

16 Have any of you ever been a witness in
17 any kind of a courtroom proceeding or Grand Jury
18 proceeding?

19 Have any of you ever been a litigant,
20 that is a plaintiff or a defendant in any kind of
21 a civil lawsuit, civil action?

22 Mr. Guido.

23 PROSPECTIVE JUROR: I was sued earlier
24 this year. An accident. It was in Brooklyn
25 dismissed.

1 THE COURT: It's over with now?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Anything about that
4 litigation that would have any bearing here?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Anyone else?

7 Mr. Dambrosio.

8 PROSPECTIVE JUROR: I was a plaintiff
9 workmen compensation case. That's over with.

10 THE COURT: How long ago was that?

11 PROSPECTIVE JUROR: Couple of years ago.

12 THE COURT: Anything about that
13 experience that would have any bearing here?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you.

16 Anyone else? Ms. Fuchs.

17 PROSPECTIVE JUROR: I was a witness to --

18 I'm a nurse and one of my patients was killed.

19 She was a baby four years old was killed by her
20 parents and I was called in to testify.

21 THE COURT: Was that a criminal matter?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: It was. How long ago was
24 this?

25 PROSPECTIVE JUROR: Maybe six, seven

1 years ago.

2 THE COURT: Was that here in Richmond
3 County?

4 PROSPECTIVE JUROR: It was right in this
5 courtroom.

6 THE COURT: In this courtroom?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Is there anything about that
9 experience you had as a witness that would prevent
10 you from being a fair juror?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you.

13 Anyone else?

14 Has anyone ever served on a jury before?

15 Mr. Orlando.

16 PROSPECTIVE JUROR: Yes. Right here in
17 this courtroom actually.

18 THE COURT: How long ago?

19 PROSPECTIVE JUROR: About seven years
20 ago.

21 THE COURT: Right here in this courtroom?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: I was the judge?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: I was better looking and I

1 had darker hair. Is there anything about that
2 experience as a juror that would prevent you from
3 being able to sit as a juror in this one?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Other hands on this?

6 Ms. Delapena.

7 PROSPECTIVE JUROR: I served on the Grand
8 Jury and also on a civil case.

9 THE COURT: Grand Jury and civil case.
10 Did the jury reach a verdict on the civil case?

11 PROSPECTIVE JUROR: They settled before
12 we could.

13 THE COURT: Anything about those
14 experiences that would prevent you from sitting as
15 a trial juror in this case?

16 PROSPECTIVE JUROR: I don't think so.

17 THE COURT: Thank you.

18 Other hands. Prior jury experience?

19 Mr. Wojnowski.

20 PROSPECTIVE JUROR: Yes. I served on a
21 criminal case, Grand Jury and civil case.

22 THE COURT: How long ago?

23 PROSPECTIVE JUROR: Anywhere from about
24 30 to 10 years ago.

25 THE COURT: Don't tell me how it ended up

1 but did the jury reach a verdict?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: If you were selected as a
4 juror in this case could you assure me and the
5 lawyers that you would keep out of your mind any
6 law you may have gotten in the Grand Jury and
7 apply the law as I give it to the jury in this
8 case?

9 PROSPECTIVE JUROR: I think so.

10 THE COURT: Thanks.

11 Anyone else?

12 Ms. Fuchs, when?

13 PROSPECTIVE JUROR: It was about six,
14 seven years ago, across the street in a civil
15 case.

16 THE COURT: Did the jury reach a verdict?

17 PROSPECTIVE JUROR: Two days later they
18 settled out of court.

19 THE COURT: Anything about that
20 experience that would prevent you from being able
21 to sit here in this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you. Mr. Orlando.

24 PROSPECTIVE JUROR: Civil case and we
25 reached a verdict.

1 THE COURT: How long ago was that?

2 PROSPECTIVE JUROR: About maybe six years
3 ago.

4 THE COURT: Was there anything about that
5 experience that would prevent you from being able
6 to sit in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Anyone else? Anybody with
9 any Grand Jury experience? Anyone else with any
10 Grand Jury experience?

11 Okay. Ms. Basman, are you employed?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: What type of work do you do?

14 PROSPECTIVE JUROR: Computer programmer.

15 THE COURT: Thank you. Ms. Longo?

16 PROSPECTIVE JUROR: Sales associate.

17 THE COURT: Thank you. Ms. Delapena?

18 PROSPECTIVE JUROR: Letter carrier.

19 THE COURT: Thank you. Mr. Dambrosio?

20 PROSPECTIVE JUROR: Sales.

21 THE COURT: Thank you. Mr. Mani?

22 PROSPECTIVE JUROR: Drive a bus.

23 THE COURT: Thank you. Ms. Valenti?

24 PROSPECTIVE JUROR: Manager of a
25 restaurant.

1 THE COURT: Thank you. Mr. Horlevein?
2 PROSPECTIVE JUROR: Engineer.
3 THE COURT: Thank you. Mr. Orlando?
4 PROSPECTIVE JUROR: Emergency
5 acquisitions for a private bank.
6 THE COURT: Thank you. Ms. Fuchs?
7 PROSPECTIVE JUROR: I am a registered
8 nurse.
9 THE COURT: Thank you. Ms. Totaram.
10 PROSPECTIVE JUROR: Operations manager in
11 retail.
12 THE COURT: Thank you. Mr. Derleth?
13 PROSPECTIVE JUROR: Correction officer.
14 THE COURT: Right, you told me. Thanks.
15 Mr. Wojnowski?
16 PROSPECTIVE JUROR: Engineer.
17 THE COURT: Thank you. Mr. Guido?
18 PROSPECTIVE JUROR: Court analyst.
19 THE COURT: Thank you. Mr. Donadio?
20 PROSPECTIVE JUROR: Police officer.
21 THE COURT: Right. You told me. Thanks.
22 Ms. Villafana?
23 PROSPECTIVE JUROR: Bookkeeping.
24 THE COURT: Thank you. And Ms. Ruzicka.
25 PROSPECTIVE JUROR: Advertising manager.

1 THE COURT: Thank you for that
2 information. I am going to finish up with these
3 principles of law that I discussed with the panel
4 yesterday.

5 Just to remind you the idea here is to
6 find out if you could promise us if you will
7 follow and accept these fundamental principles
8 that apply in all criminal cases.

9 As you now know if you didn't before an
10 indictment is not evidence. The mere fact a
11 defendant has been indicted is evidence of nothing
12 and in particular it's not evidence of guilt.
13 Should you be chosen to serve as a juror in this
14 case, the law requires that you should decide the
15 case wholly and solely on the evidence. And since
16 it is our rule of law an indictment is evidence of
17 nothing, I ask if you can assure us that you can
18 follow and accept that principle in our law. Is
19 there anyone who cannot give us that assurance?

20 If called upon -- if selected as a juror
21 you would be called upon to deliberate at the end
22 of the trial in an effort to reach a final
23 unanimous verdict or verdicts. Those of you who
24 served as jurors before know what this involves.
25 You will be going to the jury room to discuss the

1 case with eleven other people in an effort to
2 reason together arriving at a final unanimous
3 verdict or verdicts.

4 Do any of you feel you could not
5 deliberate with eleven other people if called upon
6 to do so?

7 Under our law everyone accused of a crime
8 if brought to trial is presumed innocent unless or
9 until he was proved guilty beyond a reasonable
10 doubt. The defendant in this case is presumed
11 innocent and to put this another way a defendant
12 is never required to prove his innocence. On the
13 contrary, the People represented by the District
14 Attorney, having accused the defendant of the
15 crimes charged, have the burden of proving him
16 guilty beyond a reasonable doubt.

17 The People carry this burden of proof
18 throughout the trial. It never shifts. It always
19 remains on the People and the presumption of
20 innocence remains with every defendant throughout
21 every criminal trial.

22 Is there anyone amongst you that could
23 now in your own mind grant the defendant this
24 presumption of innocence?

25 As I said in a criminal case the burden

1 of proof is entirely on the People and remains on
2 them throughout the trial. A defendant is not
3 required to prove anything nor is a defendant
4 required to disprove anything. As I say the
5 entire burden of proof is on the People and
6 remains on them throughout the trial.

7 Is there anyone amongst you who cannot
8 accept this rule in our criminal law?

9 If a defendant does not testify in a
10 criminal trial that is not a factor from which any
11 inference unfavorable to such defendant may be
12 drawn.

13 Is there anybody who cannot accept this
14 fundamental rule in our criminal law?

15 Okay. I defined yesterday the standard
16 of proof required for a conviction in every
17 criminal case. That standard as you now know if
18 you before is called proof of guilt beyond a
19 reasonable doubt. Did you all hear that
20 definition when I gave it yesterday? I am happy
21 to read it again if anyone wants. I get no
22 takers. Keep that definition in mind.

23 Let me remind you that it is the duty of
24 each juror carefully to review, weigh and consider
25 all the evidence. If after doing so you find that

1 the People have not proved the defendant's guilt
2 beyond a reasonable doubt as I have defined the
3 term, then you must find the defendant not guilty.
4 On the other hand, if you are satisfied that the
5 People have proved the defendant's guilt beyond a
6 reasonable doubt as I have defined the term, then
7 you must find the defendant guilty.

8 Will you promise us that if selected as a
9 juror in this case you will in your final
10 deliberations follow and apply this standard of
11 proof that's required here, that is proof beyond a
12 reasonable doubt? Is there anybody who cannot
13 make us that promise?

14 I will remind you that a deliberating
15 jury is not permitted to consider the subject of
16 punishment. If there is to be any sentencing
17 after a verdict that's for the Court and the Court
18 alone to deal with. The jury has no role to play
19 in that and the jury must not discuss sentencing
20 or punishment in their deliberations.

21 Will you promise us that if you are
22 selected as a juror in this case you will render
23 your verdict free from fear, favor or sympathy and
24 without considering any possibility of sentencing
25 or punishment? Is there anybody who cannot make

1 us that promise?

2 And, lastly, you know from the witness
3 list I read earlier that police officers will
4 testify in this case. They take the same oath as
5 anyone else. The mere fact that a witness is a
6 police officer does not make that witness anymore
7 or any less credible.

8 Is there anyone amongst you who has any
9 feelings about the police or who have had any
10 experiences with the police which would lead you
11 in your judgment to give a police officer's
12 testimony greater or lesser weight than anyone
13 else's merely because of the officer's occupation?

14 Does anybody feel that way one way or the
15 other?

16 Mr. Donadio, could you evaluate a police
17 witness as you would anyone else?

18 PROSPECTIVE JUROR: Absolutely.

19 THE COURT: I am going to step to the
20 side and talk to Ms. Totaram for a moment and then
21 I will let the lawyers speak to you.

22 (The following took place at the
23 sidebar:)

24 MR. LAMB: I believe the defendant wants
25 to come over.

1 THE COURT: You can step next to your
2 lawyer.

3 THE DEFENDANT: Thank you, your Honor.

4 THE COURT: We are at a sidebar with the
5 lawyers, the defendant and Ms. Totaram. What were
6 you going to talk about?

7 PROSPECTIVE JUROR: My --

8 THE COURT: Take your time.

9 PROSPECTIVE JUROR: My mother died. My
10 father is very abusive. So he was charged with
11 manslaughter and my child who saw my stepmother
12 being abused, I don't want to be part of this
13 case.

14 THE COURT: You don't think you could be
15 a fair juror in this case.

16 PROSPECTIVE JUROR: No.

17 MR. LAMB: Consent.

18 THE COURT: Consent People?

19 MS. RAJESWARI: Yes.

20 THE COURT: We are going to excuse you,
21 Ms. Totaram. You can go back across the street
22 and you can talk to the clerk over there.

23 (The following took place in open court:)

24 MS. RAJESWARI: Good morning, ladies and
25 gentlemen of the jury. Welcome back. By now you

1 already heard from Mr. Katchen. As you know
2 Anthony Katchen and myself Raja Rajeswari,
3 together we represent the People of the State of
4 New York. We are going to be presenting the case
5 to you.

6 The purpose again as Mr. Lamb and
7 Mr. Katchen told you is not to pry or embarrass
8 you. It is to make sure we have twelve fair
9 jurors, fair to the People and to the defense, and
10 who are going to be fair and impartial and well
11 suited to sit in this case. By now I think you
12 know pretty much the questions that are coming but
13 I couldn't hear very well.

14 Ms. Villafana, what do you do for a
15 living?

16 PROSPECTIVE JUROR: Bookkeeper.

17 MR. LAMB: I still didn't hear.

18 MS. RAJESWARI: Bookkeeper.

19 And you, Mr. Mani?

20 PROSPECTIVE JUROR: Bus maintenance.

21 MS. RAJESWARI: I am just going to ask a
22 few questions of the jurors. I am not going to
23 get to all of you.

24 Ms. Basman, are you married or single,
25 ma'am?

1 PROSPECTIVE JUROR: Married.

2 MS. RAJESWARI: Do you have any children?

3 PROSPECTIVE JUROR: Yes, two.

4 THE COURT: What about you, sir,

5 Mr. Mani?

6 PROSPECTIVE JUROR: Married.

7 MS. RAJESWARI: And you have children?

8 PROSPECTIVE JUROR: Two children.

9 MS. RAJESWARI: What about you,

10 Ms. Valenti?

11 PROSPECTIVE JUROR: Single.

12 MS. RAJESWARI: Ms. Fuchs? Married?

13 PROSPECTIVE JUROR: Married, three
14 children.

15 MS. RAJESWARI: What about you,

16 Mr. Horlevein?

17 PROSPECTIVE JUROR: Married, one son.

18 MS. RAJESWARI: What about you,

19 Mr. Orlando?

20 PROSPECTIVE JUROR: Single, no children.

21 MS. RAJESWARI: Mr. Wojnowski?

22 PROSPECTIVE JUROR: Divorced.

23 MS. RAJESWARI: Do you have any children?

24 PROSPECTIVE JUROR: No.

25 MS. RAJESWARI: Mr. Donadio.

1 PROSPECTIVE JUROR: Married, no children.

2 MS. RAJESWARI: Now by now you already
3 know what the charges are. The allegations in
4 this case are allegations of rape and various
5 other charges.

6 As Mr. Katchen had mentioned yesterday
7 will everybody here agree with me that in order
8 for us to prove rape it doesn't have to be in a
9 stranger situation? Rape could occur between two
10 people who know each other who are in a domestic
11 relationship. Can everybody agree with me?

12 What do you think, Ms. Villafana? Do you
13 think rape could occur with two people either
14 married, engaged or living together?

15 PROSPECTIVE JUROR: I don't understand.

16 MS. RAJESWARI: Are you having trouble
17 understanding what I am saying?

18 MR. LAMB: I am having a hard time
19 hearing.

20 MS. RAJESWARI: You have to speak up so
21 they can take it down.

22 If it's a boyfriend/girlfriend or
23 husband/wife can rape still occur if they both are
24 not strangers in that relationship? What do you
25 think? I am not in particular picking on you.

1 Just want to know your opinions. If you are well
2 suited to sit on this case.

3 PROSPECTIVE JUROR: Valenti. It shouldn't
4 occur.

5 MS. RAJESWARI: It doesn't have to be
6 strangers, that's my issue. Can the man and the
7 woman and they know each other, can it happen?

8 PROSPECTIVE JUROR: You're saying it did
9 then obviously it did.

10 MS. RAJESWARI: So you would think if
11 allegations of rape is generally strangers, is
12 that it?

13 PROSPECTIVE JUROR: I don't know the
14 situation, the complete situation so I can't tell
15 you.

16 MS. RAJESWARI: You haven't heard any
17 evidence in the case. I understand you are all
18 getting questions in a vacuum. If I tell you
19 there was rape but the parties were known to each
20 other, does that --

21 PROSPECTIVE JUROR: There needs to be
22 more to it then knowing each other what happened.

23 MS. RAJESWARI: I understand that but can
24 people in a relationship get -- even though
25 they're known to each other can she still say no?

1 PROSPECTIVE JUROR: Yes, of course.

2 MS. RAJESWARI: Does everybody here agree
3 with Ms. Valenti?

4 What about you, sir, Mr. Horlevein?

5 PROSPECTIVE JUROR: Yes.

6 MS. RAJESWARI: Even if they're married
7 or engaged or living together.

8 PROSPECTIVE JUROR: The way the world is
9 today if you say no it should be no.

10 MS. RAJESWARI: Does everybody here agree
11 with both Ms. Valenti and Mr. Horlevein? Anybody
12 feel differently?

13 PROSPECTIVE JUROR: Yes, it could be and
14 maybe very well be in the relationship because the
15 man feels he already owns the woman and he can --
16 it's his right to do what he wants.

17 MS. RAJESWARI: But does she have a right
18 to say no?

19 PROSPECTIVE JUROR: Yes, she does.

20 MS. RAJESWARI: Does everybody here agree
21 with Ms. Basman? Mr. Wojnowski?

22 PROSPECTIVE JUROR: I would agree.

23 MS. RAJESWARI: You would agree with
24 that?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: What about you,
2 Mr. Donadio?

3 PROSPECTIVE JUROR: Yes.

4 MS. RAJESWARI: Now if you hear
5 allegations of physical and sexual abuse and if
6 you also hear that the victim of the case did not
7 immediately leave the situation or tell someone,
8 can I have your assurance that if any one of you
9 are picked as a juror you will keep an open mind
10 and listen to the reasons as to why she did that?

11 Can I have that assurance, Mr. Orlando?

12 PROSPECTIVE JUROR: Yes.

13 MS. RAJESWARI: And Ms. Fuchs?

14 PROSPECTIVE JUROR: Yes.

15 MS. RAJESWARI: What about you,
16 Ms. Valenti?

17 PROSPECTIVE JUROR: Yes.

18 MS. RAJESWARI: What about Mr. Mani,
19 would you listen to her?

20 PROSPECTIVE JUROR: Yes.

21 MS. RAJESWARI: Sir?

22 PROSPECTIVE JUROR: Yes.

23 MS. RAJESWARI: What about you,
24 Mr. Donadio?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: And you are going to hear
2 from several witnesses in the case. Justice
3 Rooney read several names. Some of them are going
4 to be experts, doctors and such.

5 When you hear expert testimony can I have
6 your assurance that you will pay attention to the
7 experts, listen to their expertise and put that
8 together with all the other witnesses who are not
9 experts, who are common or lay witnesses and
10 listen to that and come to a conclusion? Can you
11 do that for us, sir?

12 PROSPECTIVE JUROR: Yes.

13 MS. RAJESWARI: And you also will hear
14 the judge will define the law for you as to what
15 we have to do. Now the burden of proof rests with
16 the People. It never shifts. We have to prove
17 the case because we are the ones who brought the
18 charges against Mr. Rucano.

19 But the judge will tell you what the
20 burden of proof is. It's proof beyond a
21 reasonable doubt. It's not proof beyond any and
22 all doubt. It's not proof beyond a shadow of a
23 doubt.

24 So, Ms. Valenti, if I prove this case to
25 you with Mr. Katchen beyond a reasonable doubt

1 which is what I need to prove, are you going to
2 hold me to a higher standard because it's a rape
3 case?

4 PROSPECTIVE JUROR: Reword that please.

5 MS. RAJESWARI: I have to prove the case
6 beyond a reasonable doubt. Not beyond a shadow of
7 a doubt. So if I prove the case to you beyond a
8 reasonable doubt, are you going to hold me to a
9 higher standard just because it's a -- the case
10 involves allegations of rape?

11 PROSPECTIVE JUROR: I am going to do what
12 I think is right. I have to give my opinion what
13 I think it should be.

14 MS. RAJESWARI: If the judge gives you a
15 standard to follow would you follow the judge's
16 instructions?

17 PROSPECTIVE JUROR: I have no choice.

18 MS. RAJESWARI: You have to. You are
19 going to take an oath.

20 Does everybody agree if you are picked as
21 a juror would you follow Justice Rooney's
22 instructions on burden of proof beyond a
23 reasonable doubt and not hold the People to a
24 higher standard? Can I have that assurance?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: What about you, sir?

2 PROSPECTIVE JUROR: I will try.

3 MS. RAJESWARI: You are going to try.

4 PROSPECTIVE JUROR: I have to listen and
5 find out.

6 MS. RAJESWARI: Of course. You haven't
7 listened to anything at this point.

8 PROSPECTIVE JUROR: Right.

9 MS. RAJESWARI: But can I have your
10 assurance you will not hold the People to a much
11 higher burden than what we have to do?

12 PROSPECTIVE JUROR: Yes.

13 MS. RAJESWARI: Can everybody here give
14 me that assurance? Is there anybody here who
15 feels that they cannot give me that assurance?

16 What about you, sir? Everybody can do
17 that?

18 PROSPECTIVE JUROR: Yes.

19 MS. RAJESWARI: Now you also will hear
20 that in this particular case there are no injuries
21 to the vaginal area. Now the Judge will tell you
22 what we need to prove, what we don't need to
23 prove. If we don't need to prove physical injury
24 to prove forcible rape, if that's the charge the
25 judge gives, will everybody follow that law and

1 just hold us to what we need to prove?

2 Mr. Wojnowski, what about you?

3 PROSPECTIVE JUROR: Yes.

4 MS. RAJESWARI: There is no problem?

5 PROSPECTIVE JUROR: I don't think so.

6 MS. RAJESWARI: If there is a problem
7 please tell me. This is the only chance we get to
8 speak to you. Once we pick you as a juror it is
9 going to be too late to say, by the way, this is
10 not something that I can be fair and impartial
11 with.

12 So if there is anything I haven't asked
13 that you think will affect your ability to be fair
14 please stop me.

15 PROSPECTIVE JUROR: So you're saying if
16 there is no proof of force it's still rape?

17 MS. RAJESWARI: If we are not required to
18 prove force in order to prove rape --

19 MR. LAMB: I am going to object.

20 THE COURT: I will sustain the objection
21 to the last statement. You want to rephrase it.

22 MS. RAJESWARI: Yes. The judge will
23 define the standard what we need to prove and we
24 will prove that beyond a reasonable doubt.

25 My question is just based on the nature

1 of the charges that it is rape, will you require
2 additional proof or hold us to a higher standard?

3 PROSPECTIVE JUROR: I thought that was
4 the previous question.

5 MS. RAJESWARI: Right. And if he tells
6 you we don't need to prove physical injury to show
7 force will you accept that?

8 PROSPECTIVE JUROR: Yes.

9 MS. RAJESWARI: Will you accept the law
10 as the judge gives it to you? That's essentially
11 the question. Did you have a question?

12 PROSPECTIVE JUROR: Physical injury,
13 specific body part or just in general?

14 MS. RAJESWARI: In general or specific
15 part as he defines the law. If he tells we don't
16 need to actually prove physical injury to prove
17 forcible rape, if he gives you the law that way
18 will you follow that?

19 PROSPECTIVE JUROR: I think so.

20 THE COURT: Anybody here who cannot
21 follow the law as Justice Rooney will define it?

22 Ms. Basman?

23 PROSPECTIVE JUROR: I will discuss this
24 in private. I don't think I can be fair when I
25 hear rape.

1 MS. RAJESWARI: Okay.

2 Now there are jurors who for a variety of
3 reasons whether it's personal, political,
4 religious, social, have a hesitation to convict no
5 matter what the prosecutor does.

6 I have a friend who told me no matter
7 what the proof is I can't say guilty, I can't
8 convict, that's my belief. Well, that is fine.
9 We need to know if anyone here feels this way even
10 if Mr. Katchen and myself prove this case to you
11 beyond a reasonable doubt.

12 Does anybody here feel, I just can't
13 convict another person, just can't do it? Anybody
14 here have that?

15 So if I prove the case beyond a
16 reasonable doubt according to the law that Justice
17 Rooney gives, can I have everybody's assurance
18 that you will convict the defendant?

19 PROSPECTIVE JUROR: I would feel bad.
20 What if I was wrong and made the wrong decision
21 sending an innocent --

22 MS. RAJESWARI: That's the hesitation to
23 convict.

24 PROSPECTIVE JUROR: Yes. I would feel,
25 yeah, God forbid, I make the wrong decision, I

1 send an innocent person away. It would bother me.

2 MS. RAJESWARI: Obviously that is going
3 to go through everybody's mind. That's not what
4 anybody wants to do. But if I prove it to you
5 beyond a reasonable doubt would you still have a
6 hesitation to convict?

7 PROSPECTIVE JUROR: I don't know.

8 MS. RAJESWARI: You don't know. Thank
9 you for your candor.

10 Is there anybody here who feels even if
11 she proves it beyond a reasonable doubt, I can't
12 say guilty, I can't convict? Anybody here feels
13 that way?

14 And Justice Rooney had already told you
15 punishment or sympathy cannot be part of your
16 evaluation. You are going to listen to witnesses,
17 you are going to hear evidence, the judge will
18 give you the law. Just like our juror said, You
19 know what I feel bad. I sympathize with him or I
20 feel bad. I don't want somebody to go to jail. I
21 don't know what he is going to get.

22 You can't consider punishment or sympathy
23 in your deliberations.

24 MR. LAMB: Objection.

25 THE COURT: Sustained. I have been over

1 this.

2 MS. RAJESWARI: All right. Everybody
3 here who can give me that assurance that if you
4 are picked as a juror you will listen to the judge
5 and not consider punishment or sympathy?

6 Ma'am.

7 PROSPECTIVE JUROR: Yes. I am sorry, say
8 it again.

9 MS. RAJESWARI: If you are picked as a
10 juror you will not consider punishment or sympathy
11 as the judge will tell you you can't.

12 PROSPECTIVE JUROR: I will follow that
13 instruction.

14 MS. RAJESWARI: Can you?

15 PROSPECTIVE JUROR: Yes.

16 MS. RAJESWARI: Sir, what about you?

17 PROSPECTIVE JUROR: Yes.

18 PROSPECTIVE JUROR: Yes.

19 MS. RAJESWARI: Anybody else here?

20 Ms. Basman?

21 PROSPECTIVE JUROR: I cannot be
22 unsympathetic. I cannot.

23 MS. RAJESWARI: Ma'am, same issue?

24 Ms. Longo?

25 PROSPECTIVE JUROR: Yes.

1 MS. RAJESWARI: Ms. Ruzicka?

2 PROSPECTIVE JUROR: Yes.

3 MS. RAJESWARI: Thank you for your
4 candor.

5 Ladies and gentlemen, is there anything
6 that I have not asked you that you think you want
7 to speak in private that will affect you being a
8 fair juror in this case? You want to speak in
9 private I understand.

10 PROSPECTIVE JUROR: Yes.

11 MS. RAJESWARI: Anything that I haven't
12 touched upon? If there is nothing else I am going
13 thank you for your time and your attention.

14 THE COURT: All right, Mr. Lamb.

15 MR. LAMB: Good afternoon, ladies and
16 gentlemen. Perhaps we've been a little unfair
17 with you because we've been asking you questions
18 based on little snippets of the case that we've
19 been feeding to you and then asking you to try to
20 decide how you would answer, how you would handle
21 a situation without really having all of the
22 facts.

23 So my question to you is can I have the
24 assurance of all of you that you will listen to
25 all of the evidence, the entire case before

1 arriving at a decision as to the guilt or
2 innocence?

3 In other words, quite frequently what we
4 just tend to do is when we hear something that
5 sounds very damning or bad, we draw a conclusion
6 at that point and start to close our minds
7 afterward and we don't hear what happens after
8 which might be something that counteracts what you
9 originally heard.

10 So the bottom line of this is that you
11 have to be extremely patient and listen to all of
12 the evidence. And then after you've heard all of
13 the evidence, you have to endure hearing both of
14 us, both attorneys tell what we think the evidence
15 proved, and then you have the honor of listening
16 to Judge Rooney give you the law, and then and
17 only then can you make a decision as to the guilt
18 or innocence of the defendant.

19 That's a tall order to fill. Do I have
20 the assurance that each and every one of you, that
21 you can do that? That you can keep an open mind
22 no matter how bad some particular part of the case
23 is until you've heard both sides, you've heard
24 everything? Can I get that assurance from all of
25 you?

1 PROSPECTIVE JUROR: Personally I could
2 say it depends on the situation because the type
3 of person I am, I hear one wrong thing and I jump
4 the gun. I am going to be honest. That's who I
5 am.

6 MR. LAMB: You tend to be that way?

7 PROSPECTIVE JUROR: I am being honest.

8 MR. LAMB: I thank you for that. It's
9 not an easy task to do but it's something that you
10 have to do in order to be a fair juror.

11 You see the proceedings in a trial are
12 the District Attorney goes first. He must go
13 first. He has the obligation to prove a case to
14 you so he has the lead. Somebody always has to
15 lead and then somebody has to follow. Somebody
16 has to lead in like a dance. Otherwise you both
17 step all over each other's feet. Somebody has to
18 lead and somebody as to follow.

19 The DA goes first. Then the defendant.
20 If you have already closed your mind during the
21 DA's case the defendant doesn't even get a chance
22 to even -- you don't even give him a chance to
23 answer. So you sort -- it may take days, a day or
24 two during the DA's case so you still have to keep
25 your mind open. Just something you have to do if

1 you are going to be a fair juror. And it may be a
2 difficult task to do.

3 Do all of you feel up to it? Anybody who
4 can't?

5 PROSPECTIVE JUROR: I can't do that.

6 MR. LAMB: Ms. Longo.

7 PROSPECTIVE JUROR: Yes.

8 MR. LAMB: Thank you for your candor.

9 Ms. Basman?

10 PROSPECTIVE JUROR: In this particular
11 case I couldn't do it.

12 MR. LAMB: My client has pled not guilty
13 in the case. So he is saying through that plea he
14 didn't commit the crimes that he's charged with.
15 DA is accusing him --

16 MS. RAJESWARI: Objection.

17 MR. KATCHEN: Objection.

18 THE COURT: Well, he pled not guilty
19 that's clear. What's your question?

20 MR. LAMB: So we're at odds as to whether
21 the defendant is guilty or innocent. My client
22 says he's innocent. They say he's guilty. But
23 there is one thing I think both of us agree on in
24 this particular case and that is that there was a
25 relationship between the complainant and the

1 defendant. A living relationship for a number of
2 months. But they lived together in a romantic
3 relationship for a number of months.

4 And the evidence will show I think
5 uncontroverted on both sides that this
6 relationship was a very dysfunctional
7 relationship. It was just a relationship with
8 disaster written all over it.

9 MR. KATCHEN: Objection.

10 THE COURT: You are really making an
11 argument now. What's the question?

12 MR. LAMB: Does anybody here feel as if
13 they might be affected by this based on their own
14 experiences, their own past experiences of perhaps
15 a painful or traumatic relationship that they
16 might have had?

17 We all probably have had a relationship
18 or two that didn't work in our lives. But is
19 there anybody here who has had a relationship that
20 was so painful, so traumatic that they don't feel
21 that they could in all fairness be fair to both
22 sides in this case?

23 (Hands raised.)

24 MR. LAMB: Ms. Basman and Mr. Guido.

25 PROSPECTIVE JUROR: Yes.

1 MR. LAMB: And you both feel that your
2 past, without going into detail, you had a
3 relationship that was very painful and would make
4 it very difficult for you to listen objectively to
5 another person's dysfunctional relations or bad
6 relationship; is that correct?

7 Thank you for your candor.

8 Now you've heard the judge indicate that
9 in a criminal case the defendant does not have to
10 testify and if he chooses not to testify that you
11 are not to hold that against him because he didn't
12 have to prove anything. The burden of proof is
13 not on him, it's on the DA.

14 If he chooses not to testify do I have
15 the assurance of all of you that you will follow
16 the judge's ruling and not hold it against him and
17 not say, oh, he must be hiding something, he must
18 be guilty because an innocent person would speak
19 out? Is there anybody here that feels that an
20 innocent person should speak out and should
21 testify?

22 Ms. Ruzicka and Villafana. You both feel
23 an innocent person should speak out?

24 PROSPECTIVE JUROR: Absolutely.

25 MR. LAMB: You all feel that way?

1 PROSPECTIVE JUROR: Yes.

2 PROSPECTIVE JUROR: It makes the case
3 harder because it's a relationship.

4 MR. LAMB: If the judge instructs you as
5 a matter of law that you must not hold it against
6 the defendant if he chooses not to exercise his
7 right to testify, if he -- in other words, if he
8 feels that the DA has not proven their case and so
9 why should he testify, you would still hold that
10 against him, still feel he should get on the stand
11 and deny the charges?

12 PROSPECTIVE JUROR: Ms. Villafana.
13 Absolutely.

14 PROSPECTIVE JUROR: I would think he
15 would want to. It's a difficult situation where
16 you have two people involved and there are a lot
17 of issues between them. How would you understand?

18 MR. LAMB: You understand this is a
19 factual issue superimposed on a legal issue. This
20 is -- people lived a real life and things really
21 happened. But we are now in a courtroom which is
22 kind of an unofficial thing and artificial thing
23 and there are rules in this courtroom. Can you
24 accept that and do you accept one of the rules is
25 that the People have the burden of proving guilt

1 to you. Would you accept that if the People if
2 it's our position as the defense that the People
3 have failed to do that, that they have not proven
4 that he is guilty, why should he bother to
5 testify? And the judge will instruct you as to
6 that. The judge will tell you.

7 THE COURT: I wouldn't give them the
8 instruction the way you just phrased it. The law
9 is quite clear if the defendant does not testify
10 in a criminal trial it is not factor from which
11 any inference unfavorable to the defendant may be
12 drawn. Is there anybody who cannot accept that
13 fundamental principle in our criminal law?

14 MR. LAMB: You ladies in the back there.
15 Maybe it was the way I put it.

16 PROSPECTIVE JUROR: We would have to
17 accept it because it's the written law.

18 PROSPECTIVE JUROR: That's not how I
19 feel.

20 PROSPECTIVE JUROR: If you're innocent
21 you want your name cleared and you want your story
22 heard, you would speak out. But, yeah, obviously
23 if you're sworn as a juror you have to follow the
24 law of the land.

25 PROSPECTIVE JUROR: But it's difficult.

1 PROSPECTIVE JUROR: But that's difficult.

2 MR. LAMB: You would do it very
3 reluctantly?

4 PROSPECTIVE JUROR: I would probably say
5 reluctantly. If you are innocent you want your
6 story heard and you want your name cleared.

7 MR. LAMB: Okay.

8 PROSPECTIVE JUROR: And you would put
9 yourself out there to get it known, I would think.
10 I would.

11 MR. LAMB: You feel the same way?

12 PROSPECTIVE JUROR: It would be what the
13 evidence shows.

14 MR. LAMB: How about the rest of you?

15 PROSPECTIVE JUROR: You've made the
16 statement about a relationship. If they're doing
17 this through her side of the relationship, I would
18 think that he should be able even if he's innocent
19 tell his side of the story.

20 MR. LAMB: What if we feel --

21 THE COURT: Would you step up just a
22 moment please?

23 (Discussion held off the record at the
24 bench.)

25 THE COURT: Go ahead.

1 MR. LAMB: Let's try the flip side of
2 that. If the defendant does testify, if he
3 chooses to testify, will you listen to him as
4 carefully and as patiently and as carefully as you
5 did every other witness, or would you just close
6 your mind, the defendant he has something to lose
7 or I didn't believe a word he says? Do I have the
8 assurance of every one of you that you will listen
9 to him carefully if he does choose to testify and
10 give him the same -- his testimony the same degree
11 of consideration as you do every other witness?

12 PROSPECTIVE JUROR: I would be too
13 sympathetic to the woman.

14 MR. LAMB: To the woman?

15 PROSPECTIVE JUROR: To the woman.

16 MR. LAMB: That's fair enough.

17 PROSPECTIVE JUROR: Ms. Valenti. Like I
18 said before I am not open-minded. I'm being
19 honest.

20 MR. LAMB: Well, I thank you for your
21 time, ladies and gentlemen.

22 THE COURT: Would you step up just a
23 moment again please?

24 (Discussion held off the record at the
25 bench.)

1 THE COURT: I am going to give the
2 lawyers a few minutes to go over their notes and
3 step to the side.

4 MR. KATCHEN: I believe one of the
5 prospective jurors wanted to speak to us.

6 THE COURT: Ms. Basman, you can come
7 right across here and we will talk at the sidebar.

8 (The following took place at the
9 sidebar:)

10 (Prospective Juror Number 1 approached.)

11 THE COURT: Okay. We are at the sidebar
12 with Ms. Basman, the lawyers and the defendant.

13 What did you want to say?

14 PROSPECTIVE JUROR: 26 years ago when I
15 was thirteen back in Russia I spent a month with
16 my mother and my uncle and my uncle molested me.
17 I was too afraid, too upset. My mom, I didn't say
18 anything. Now I know what rape is.

19 THE COURT: Thank you. Anything else?
20 Any questions?

21 MR. LAMB: No.

22 MS. RAJESWARI: No.

23 THE COURT: Thank you, Ms. Basman. I
24 will let you resume your seat.

25 When you're all ready let me know.

1 (The following took place in open court:)

2 THE COURT: I am going to give the
3 lawyers a few minutes. If you want to step out or
4 you can stay, don't discuss the case with each
5 other or anyone else.

6 (Short recess taken.)

7 (The following took place at the
8 sidebar:)

9 THE COURT: We're at a sidebar with the
10 defendant and the lawyers. For challenges it
11 seems to me there are a number of challenges,
12 cause challenges. If you want to consent and you
13 don't want to argue it out, just say so. We will
14 go one at a time.

15 Number one, Ms. Basman. Cause People?

16 MR. KATCHEN: Yes.

17 THE COURT: Mr. Lamb, you consent?

18 MR. LAMB: Yes.

19 THE COURT: On consent.

20 Ms. Longo. Cause People?

21 MR. KATCHEN: Yes.

22 THE COURT: Mr. Lamb?

23 MR. LAMB: Yes.

24 THE COURT: Cause on consent.

25 Number 3, Ms. Delapena. Cause People?

1 MR. KATCHEN: Yes.

2 THE COURT: Mr. Lamb?

3 MR. LAMB: Yes.

4 THE COURT: For cause on consent.

5 Number 4, Mr. Dambrosio. Cause People?

6 MR. KATCHEN: Yes.

7 THE COURT: Mr. Lamb?

8 MR. LAMB: Yes.

9 THE COURT: For cause on consent.

10 Number 5, Mr. Mani. Cause People?

11 MS. RAJESWARI: Yes. His English, I

12 don't think he understands. We couldn't

13 understand a word he was saying. There was a

14 serious language issue.

15 MR. KATCHEN: Based on the voir dire

16 there doesn't seem any possible way he would be

17 able to deliberate with other jurors. He wouldn't

18 be responsive to questions.

19 MS. RAJESWARI: What anybody said.

20 THE COURT: Mr. Lamb?

21 MR. LAMB: I would oppose that. I

22 thought he answered questions.

23 THE COURT: We'll have to get him over.

24 MS. RAJESWARI: He didn't say anything.

25 THE COURT: Mr. Mani, could you step over

1 here a moment please?

2 Wayne, can we get him around here please?

3 (Prospective Juror Number 5 approached
4 the sidebar.)

5 THE COURT: Mr. Mani, we just wanted to
6 ask you about your English. Have you understood?

7 PROSPECTIVE JUROR: Yes. I understand
8 some.

9 THE COURT: I beg your pardon?

10 PROSPECTIVE JUROR: Some words.

11 THE COURT: Some words you have trouble
12 with?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: How much do you think you've
15 understood if you could give me a percentage?
16 Half of it, three quarters of it? What do you
17 think?

18 How much do you think you've understood
19 of what we've said today? Most of it, some of it?

20 PROSPECTIVE JUROR: Some of it.

21 THE COURT: Some of it. Okay. Any
22 questions?

23 MR. LAMB: No.

24 THE COURT: Thank you, sir. I will let
25 you resume your seat. Thank you.

1 MR. LAMB: I rest your case.

2 THE COURT: You consent?

3 MR. LAMB: Yes.

4 THE COURT: For cause on consent.

5 Ms. Valenti. Cause People?

6 MR. LAMB: Clearly she couldn't be fair.

7 MR. KATCHEN: We are not going to argue

8 with that.

9 THE COURT: This is a cause challenge by

10 the People?

11 MR. KATCHEN: Consent.

12 THE COURT: You know we're talking with

13 Ms. Valenti.

14 MR. KATCHEN: Yes.

15 MR. LAMB: Yes.

16 THE COURT: Cause on consent?

17 MR. LAMB: Yes.

18 THE COURT: Mr. Horlevein. Cause People?

19 MS. RAJESWARI: No.

20 THE COURT: Cause defense?

21 MR. LAMB: Yes.

22 THE COURT: People are consenting or not?

23 MS. RAJESWARI: We'll consent.

24 THE COURT: For cause on consent.

25 Next is Mr. Orlando. Cause People?

1 MS. RAJESWARI: No.

2 THE COURT: Defense?

3 MR. LAMB: Yes. I just looked at him

4 what was your response?

5 MS. RAJESWARI: No cause.

6 MR. LAMB: No cause.

7 THE COURT: Peremptory People?

8 MS. RAJESWARI: No.

9 THE COURT: Defense?

10 MR. LAMB: No.

11 THE COURT: So, Carmine, that's Juror

12 Number 6.

13 THE CLERK: Yes, sir.

14 THE COURT: Next is Ms. Ruzicka. Cause

15 People?

16 MS. RAJESWARI: Yes.

17 THE COURT: Mr. Lamb?

18 MR. LAMB: Consent.

19 THE COURT: For cause on consent.

20 Next is Ms. Villafana. Cause People?

21 MR. KATCHEN: Yes.

22 MR. LAMB: Consent.

23 THE COURT: For cause on consent.

24 Next is Mr. Donadio. Cause People?

25 MS. RAJESWARI: No.

1 MR. KATCHEN: No.

2 THE COURT: Cause?

3 MR. LAMB: No.

4 THE COURT: Peremptory People?

5 MS. RAJESWARI: No.

6 THE COURT: Defense?

7 MR. LAMB: Yes.

8 THE COURT: Next Mr. Guido. Cause

9 People?

10 MR. KATCHEN: Absolutely.

11 MS. RAJESWARI: Yes.

12 THE COURT: Defense?

13 MR. LAMB: Consent.

14 THE COURT: For cause on consent.

15 Wojnowski. Cause People?

16 MS. RAJESWARI: No.

17 MR. LAMB: Yes. He continued to indicate

18 that he would insist that the defendant testify.

19 THE COURT: People?

20 MS. RAJESWARI: We'll consent.

21 THE COURT: For cause on consent.

22 Next is Mr. Derleth. Cause People?

23 MS. RAJESWARI: Yes.

24 THE COURT: Mr. Lamb?

25 MR. LAMB: Yes.

1 THE COURT: For cause on consent. And
2 last is Ms. Fuchs. Cause People?

3 MR. KATCHEN: No.

4 THE COURT: Defense?

5 MR. LAMB: No.

6 THE COURT: Peremptory?

7 MS. RAJESWARI: No.

8 THE COURT: Defense?

9 MR. LAMB: Yes.

10 THE COURT: For the record we will also
11 excuse Number 15, Ms. Totaram.

12 Carmine says we have 22 bodies left and
13 that's all we can get today. I can get another
14 fifty tomorrow. You want to do this at two or you
15 want me to do my part now or break for lunch? I
16 don't care.

17 MR. LAMB: However you want to do it.

18 THE COURT: I will do my voir dire. Then
19 we'll break for lunch so you can voir dire.
20 We're going to do 22 now.

21 THE CLERK: People used three, defense
22 used six.

23 MR. LAMB: That's the total out of both
24 rounds?

25 THE COURT: Right. Listen you still want

1 to keep the sworns around? Why don't we tell them
2 to come back tomorrow?

3 MR. LAMB: Okay.

4 THE COURT: You consent to that?

5 MR. LAMB: Okay.

6 THE COURT: What I will do is do my voir
7 dire and then I will send the panel out and tell
8 the sworns they can come back tomorrow.

9 (The following took place in open court:)

10 THE CLERK: The following juror has been
11 selected for this case: Edmund Orlando, you are
12 Juror Number 6. Just remain seated. Only
13 Mr. Orlando remain seated.

14 Everybody else please stand, go out in
15 the hallway. You have to return to central jury
16 for your next trial. Thank you.

17 (All unselected prospective jurors left
18 the courtroom and returned to central jury.)

19 THE CLERK: Mr. Orlando, just take the
20 jury box, remain standing, raise your right hand.

21 Do you solemnly swear that you will try
22 this action in a just and impartial manner and to
23 the best of your judgment render a verdict
24 according to the law and the evidence so help you
25 God?

1 JUROR NO. SIX: I do.

2 THE CLERK: Thank you.

3 THE COURT: Mr. Orlando, you can have a
4 seat in the audience with the sworns.

5 THE CLERK: Juror Number 6 can have a
6 seat with the other five.

7 THE COURT: I am going to do this at
8 2 o'clock.

9 MS. RAJESWARI: Yes, your Honor.

10 MR. LAMB: Okay.

11 THE COURT: I understand there are 22
12 people left we haven't talked to. We are going to
13 do all of you in one round so we can finish up
14 with this panel and it's about 12:35. This is
15 really not enough time before lunch to get into
16 this. We are going to break until two and at two
17 we'll interview the remaining 22 people and we'll
18 know your faith well before the end of the
19 afternoon. Thank you very much for your patience
20 and ask you all to step out.

21 Please go to central jury at two o'clock
22 and an officer will bring you over. I am going to
23 ask our sworn jurors to stay with us for a minute.

24 (Prospective jurors left the courtroom.)

25 THE COURT: Counsels, can you step up for

1 one moment please?

2 (Discussion held off the record at the
3 bench.)

4 THE COURT: We've just been deciding
5 whether to keep you around longer. Things are
6 going a little slower than we thought they would.
7 We're going to continue selection this afternoon
8 but the lawyers and I have decided there is really
9 no need to keep you around this afternoon because
10 we're not going to get started until tomorrow.

11 We'd like you to be back tomorrow in the
12 jury room and I am going to say noon. I think by
13 then we should have a jury hopefully and we'll
14 start up then. So thanks very much for your
15 patience and attention. I'm sorry for the delay
16 but it's not going to hold us up in terms of our
17 initial schedule.

18 Let me remind you before you leave you
19 must not discuss the case with each other or
20 anyone else. You must not speak with anyone prior
21 to being discharged about taking anything, any
22 payment or benefit in return for supplying
23 information concerning this trial. Report
24 directly to me please any attempt to your
25 knowledge involving an attempt by anyone to

1 improperly influence you or any member of the
2 jury. Do not visit or view the premise where any
3 charged crime was allegedly committed. I don't
4 believe you've heard a location yet. You will.

5 Don't read, view or listen to any media
6 accounts involving this case should be there be
7 any. That includes the Internet. Don't research
8 any fact, issue or law. Don't form any opinion.
9 Keep an open mind until all the evidence is in and
10 you begin your deliberations.

11 Thank you again. Have a good afternoon.
12 I don't think Mr. Orlando has seen the jury room.

13 PROSPECTIVE JUROR: I know where it is.

14 THE COURT: You were here before. So
15 we'll see you again at noon. Have a good day.

16 (The sworn jurors left the courtroom.)

17 THE COURT: The sworn jurors have left.
18 Do you want to make a record?

19 MR. LAMB: Yes, Judge. As the Court had
20 indicated we've had some discussions in the past
21 sessions regarding handwriting expert with regard
22 to an alleged diary in possession of the DA and
23 the defendant has indicated to me that he has
24 secured a handwriting expert.

25 He has provided me with a copy of the CV

1 and I have in turn provided a copy of the CV to
2 the DA.

3 It is your request that prior -- that
4 this expert be allowed to examine the diary prior
5 to the testimony of the complaining witness
6 because it pertains to very crucial portions.

7 THE COURT: When do you anticipate
8 calling the defendant?

9 MR. KATCHEN: Either tomorrow or Monday
10 depending when we start.

11 MR. LAMB: We're trying to make every
12 effort to get this expert in tomorrow.

13 THE COURT: Okay.

14 MR. LAMB: So I would hope that we could
15 do this: That the People would allow the expert
16 to examine the diary and what he has to do before
17 the complaining witness is called.

18 THE COURT: All right. We should be able
19 to work that out.

20 MS. RAJESWARI: Yes.

21 THE COURT: Okay. This is an expert who
22 will go to the DA's office?

23 THE DEFENDANT: Yes, your Honor, he will.

24 THE COURT: Good.

25 MR. LAMB: Thank you.

1 THE COURT: 2 o'clock.

2 MS. RAJESWARI: Thank you.

3 THE CLERK: Court's in recess for lunch,
4 two o'clock.

5 (Court stood in recess for lunch.)

6 AFTERNOON SESSION.

7 THE CLERK: Case on trial continues. All
8 parties present.

9 THE COURT: Sworn Juror Number 2 told the
10 sergeant he has some problems.

11 MR. LAMB: I'm sorry?

12 THE COURT: Sworn Juror Number 2 has told
13 the sergeant he has some family problems. So he's
14 here. Let's bring him in and see what's on his
15 mind.

16 THE CLERK: Matthew Santoro.

17 (Short pause in proceedings.)

18 COURT OFFICER: Are you ready?

19 THE COURT: Yes.

20 (Juror Number 2 entered courtroom.)

21 THE SERGEANT: Juror Number 2 entering.

22 THE COURT: Mr. Santoro, the sergeant
23 says you wanted to speak to us. What's on your
24 mind?

25 JUROR NO. 2: I was under the

1 understanding --

2 THE COURT: I beg your pardon?

3 JUROR NO. 2: I had a misunderstanding
4 what went on yesterday with the selection of the
5 jury. I didn't know that I was permanently
6 selected to sit and it's not going to work out for
7 me to be able to stay the length of the case
8 because financially I can't afford to stay here
9 for the remainder of the case.

10 THE COURT: What do you do for a living?

11 JUROR NO. 2: I am a longshoreman.

12 THE COURT: Are they paying you while
13 you're here?

14 JUROR NO. 2: No. They did the past two
15 days but they are not going to be able to pay me
16 the remainder of the trial.

17 THE COURT: You want to step up?

18 (Discussion held off the record at the
19 bench.)

20 THE COURT: Mr. Santoro, could you just
21 step out of the courtroom? We'll make a brief
22 record and we'll bring you back in.

23 (Juror Number 2 left the courtroom.)

24 THE COURT: Okay, the juror has left the
25 courtroom. How should we proceed?

1 MR. LAMB: Judge, it is my feeling that
2 based on what the juror said his attention --
3 there is a danger his attention might very well be
4 on his ability to pay bills rather than what's
5 transpiring in the courtroom. I would consent to
6 excusing him and my client is agreeing with that.

7 THE COURT: Is that right, Mr. Rucano?

8 THE DEFENDANT: I have no problem with
9 that.

10 MR. KATCHEN: People consent as well.

11 THE COURT: Bring him back in and we'll
12 excuse him.

13 THE SERGEANT: Sworn Juror Number 2
14 reentering the courtroom.

15 THE COURT: Okay. Mr. Santoro, the
16 lawyers have consented to excusing you from this
17 matter. You are excused. I guess he goes back to
18 central jury. You have to go back to central jury
19 to check out.

20 JUROR NO. 2: Thank you.

21 THE COURT: I think they are going to
22 give you his card. They got it.

23 JUROR NO. 2: Thank you.

24 THE COURT: He was Number 2. Shall we
25 simply move numbers three, four, five and six up a

1 seat?

2 MR. KATCHEN: That's fine.

3 MR. LAMB: Yes, Judge.

4 THE COURT: So, in other words, three
5 becomes two, four becomes three and so on. Let's
6 get the panel over here and finish up with this
7 group.

8 THE CLERK: 22 jurors.

9 THE COURT: I can't get anymore this
10 afternoon. It's tomorrow?

11 THE CLERK: Yes, Judge.

12 (Pause in proceedings.)

13 MR. LAMB: Judge, can we approach
14 briefly?

15 THE COURT: Sure.

16 (Discussion held off the record at the
17 bench.)

18 THE COURT OFFICER: Ready for the panel?

19 THE COURT: Yes.

20 (Prospective jurors entered the
21 courtroom.)

22 THE CLERK: As your name is called take
23 your belongings and have a seat as directed.

24 Seat one, Kathy Ortiz. O R T I Z.

25 Seat two, Michael Palazzolo.

1 P A L A Z Z O L O.

2 Three, Joseph Nochella. N O C H E L L A.

3 Four, Nadine Brown. B R O W N.

4 Nadine Brown.

5 No response, Judge, we'll call across the
6 street.

7 THE COURT: All right.

8 THE CLERK: Seat four, Richard Nelson.

9 N E L S O N.

10 Seat five, Lynn Ann Zakrzewski.

11 Z A K R Z E W S K I.

12 Six, James Aymil. A Y M I L.

13 Seven, Christopher Nieves. N I E V E S.

14 Seat eight, Richard Agnello.

15 A G N E L L O.

16 Seat nine, Robert Mirabella.

17 M I R A B E L L A.

18 Ten, Debra McCarter. M C C A R T E R.

19 Eleven, Michael Philip. P H I L I P.

20 Twelve, George Finger. F I N G E R.

21 Thirteen, Dara Keating. K E A T I N G.

22 Fourteen, Maria Huertas. H U E R T A S.

23 Fifteen, Maryann Perry. P E R R Y.

24 Sixteen, Robert Shu. S H U.

25 Seat seventeen, will be in the front row

1 closest to the windows. Step up, Preston Sharkey.

2 S H A R K E Y. That's seat 17.

3 Eighteen, is Vanna Stoyko. S T O Y K O.

4 Seat nineteen, step up Angela Caleca.

5 C A L E C A.

6 Twenty, Jeffrey Sclafani S C L A F A N I.

7 Sclafani.

8 Twenty-one, Robert Taylor. T A Y L O R.

9 Seat twenty-two, Ronald Lewis L E W I S.

10 Twenty-two prospective jurors seated.

11 THE COURT: I will ask those of you in
12 the front row to keep your voice up so we can all
13 hear you. And I will just launch into this.

14 Do any of you know the lawyers or the
15 defendant?

16 Ms. Keating?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Who do you know?

19 PROSPECTIVE JUROR: I saw ADA a couple of
20 times in his office.

21 THE COURT: Excuse me?

22 PROSPECTIVE JUROR: I seen ADA in their
23 office a couple of times.

24 THE COURT: These two?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Job related in connection
2 with another case.

3 PROSPECTIVE JUROR: Cases that I had.

4 THE COURT: Okay.

5 You know what we're talking about,
6 counsellors?

7 PROSPECTIVE JUROR: No. I am a police
8 officer.

9 THE COURT: Oh, I see.

10 PROSPECTIVE JUROR: So every time I have
11 a case I go to ADA's.

12 THE COURT: If you were selected as a
13 juror in this case could you be fair and
14 impartial, fair to both sides?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: I will let the lawyers talk
17 to you further about that if you want to.

18 Anybody else?

19 I read a list of potential witnesses
20 earlier in this case. And the question is did any
21 of you recognize any of those names?

22 Any of you want me to read the names
23 again?

24 Do any of you think you know anything
25 about this case apart from what you've heard in

1 court here yesterday and today?

2 Are any of you or anyone close to you
3 involved in law enforcement in any capacity? I
4 will talk with the jury box and then I will go out
5 to the front row.

6 Mr. Palazzolo, who do you know?

7 PROSPECTIVE JUROR: I have a lot of
8 friends that are newly cops and one of my really,
9 really close friends is.

10 THE COURT: New cops is that what you
11 said?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Anything about those
14 friendships that would have any bearing in your
15 mind in terms of being fair?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Front row.

18 Mr. Aymil.

19 PROSPECTIVE JUROR: Yes, several friends.

20 THE COURT: Same question. Is that going
21 to have any bearing here in terms of your ability
22 to be fair?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Thank you.

25 Anyone else in the front row?

1 Ms. Zakrzewski?

2 PROSPECTIVE JUROR: My brother-in-law is
3 a detective.

4 THE COURT: Is it detective, New York
5 City police detective? Is that going to have any
6 affect on your ability to be fair?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Ms. Ortiz.

9 PROSPECTIVE JUROR: Neighbors, cousins
10 all detectives and one judge good friend in
11 Manhattan Supreme Court.

12 THE COURT: Who is the judge?

13 PROSPECTIVE JUROR: Susan Cohan.

14 THE COURT: Do you think is there
15 anything about these friendships, relationships
16 that would affect your ability to be fair?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Back row. One, two, three,
19 four. Mr. Finger.

20 PROSPECTIVE JUROR: My stepson is a
21 police officer.

22 THE COURT: Is that going to have any
23 affect on your ability to be a fair juror?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you.

1 Ms. Keating, you are in law enforcement.

2 How long have you been a police officer?

3 PROSPECTIVE JUROR: Six years. My

4 husband is also a police officer.

5 THE COURT: Your husband also. You think

6 you could be a fair juror in a criminal case, fair

7 to both sides?

8 PROSPECTIVE JUROR: I am not sure.

9 THE COURT: You are not sure.

10 Mr. Shu.

11 PROSPECTIVE JUROR: I know Mr. Humel. He

12 was the top ranked in the NYPD newest attorney.

13 THE COURT: Newest attorney?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is your friendship with this

16 going to affect your ability to be a fair juror?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Could you be fair?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Anyone else in the jury box?

21 Did you raise your hand?

22 PROSPECTIVE JUROR: Yes. Maria Huertas.

23 My sister-in-law is in enforcement and close

24 friend and family.

25 THE COURT: What does your sister do in

1 law enforcement?

2 PROSPECTIVE JUROR: She is a school
3 safety and now she is taking the test for
4 policeman.

5 THE COURT: Is there anything about her
6 job and your friend's jobs that would affect your
7 ability to be fair?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: Thank you.

10 Did I get everyone in the jury box?

11 Let me go out to the audience. I think
12 there were some hands for law enforcement.

13 Ms. Caleca.

14 PROSPECTIVE JUROR: Yes. My cousin was
15 deputy warden in Riker's.

16 THE COURT: Okay. Is that going to have
17 any affect on your ability to be a fair juror?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you.

20 Was there more or did I cut you off?

21 Mr. Sclafani.

22 PROSPECTIVE JUROR: Yes. My cousin is a
23 lieutenant in NYPD. I have a couple of friends
24 who work in corrections in Riker's.

25 THE COURT: Same question. Will these

1 friendships, relationships have any affect on your
2 ability to be fair?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you.

5 Mr. Taylor, did you have your hand up?

6 PROSPECTIVE JUROR: Yes, I have an uncle
7 who is a retired correction officer.

8 THE COURT: Would that affect your
9 ability to be a fair juror?

10 PROSPECTIVE JUROR: No, Judge.

11 THE COURT: Thank you. Did I get
12 everybody?

13 Next question, are any of you or anyone
14 close to you involved in the legal field in any
15 way, shape or form, lawyer, paralegal, employee,
16 prosecutor's office?

17 Ms. Perry?

18 PROSPECTIVE JUROR: My sister,
19 brother-in-law and nephew are lawyers in Staten
20 Island.

21 THE COURT: Do any of them practice in
22 criminal law to your knowledge?

23 PROSPECTIVE JUROR: Very, very little.

24 THE COURT: Have you ever discussed cases
25 with them?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Is there anything about these
3 relationships that would prevent you from being
4 fair?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Thank you. Did I see another
7 hand in the jury box?

8 Ms. Huertas.

9 PROSPECTIVE JUROR: My brother,
10 paralegal.

11 THE COURT: Does he work for a law firm?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you know if the firm
14 practices any criminal law?

15 PROSPECTIVE JUROR: No, I don't think so.

16 THE COURT: Anything about that that will
17 affect your ability to be a fair juror?

18 PROSPECTIVE JUROR: Not sure.

19 THE COURT: Not sure. How so? What is
20 it?

21 PROSPECTIVE JUROR: We go through a lot
22 of conversations. I hope it doesn't. I don't
23 think it would.

24 THE COURT: You don't think it would,
25 okay.

1 Anyone else in the jury box on this
2 question?

3 Anybody in the front row?

4 Have any of you or anyone close to you to
5 your knowledge ever been the victim of a crime?

6 Ms. Caleca, can you tell me a little bit
7 it?

8 PROSPECTIVE JUROR: My father was held up
9 in his own garage and my husband and I were tried
10 to get into the car with a gun but there was no
11 case because he ran away and my father didn't
12 recognize him because he had covered his face.

13 THE COURT: How long ago were these
14 events?

15 PROSPECTIVE JUROR: Quite a few years.

16 THE COURT: Anything about any of these
17 events that would prevent you from being a fair
18 juror in this case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Thank you.

21 Anyone else in the front row?

22 Let me get the back row.

23 Ms. Huertas.

24 PROSPECTIVE JUROR: I was robbed inside
25 the apartment when I was sleeping and I woke up to

1 the robbery. And they fled as I came out of the
2 bedroom.

3 THE COURT: Was anybody caught, arrested?

4 PROSPECTIVE JUROR: Not to my knowledge,
5 no.

6 THE COURT: How long ago was this?

7 PROSPECTIVE JUROR: About ten years ago.

8 THE COURT: Would this have any affect on
9 your ability to be fair in this case?

10 PROSPECTIVE JUROR: I don't know. I have
11 a lot of anxiety from that.

12 THE COURT: I can imagine. And obviously
13 it's something that's going to be with you forever
14 in your mind. But the question is would it affect
15 your ability to be fair as a juror in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Thank you.

18 Other hands on this question.

19 Ms. Ortiz.

20 PROSPECTIVE JUROR: My sister. Domestic
21 violence well over twenty years ago.

22 THE COURT: Was there an arrest in the
23 case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Anything about that that

1 would affect your ability to be a fair juror here?

2 PROSPECTIVE JUROR: I would hope not.

3 THE COURT: I am supposed to try to push
4 people if I can to get an unequivocal response.

5 PROSPECTIVE JUROR: I am not sure.

6 THE COURT: You are not sure. I will
7 leave you alone. If the lawyers want to talk to
8 you they can do that.

9 Other hands. Mr. Shu.

10 PROSPECTIVE JUROR: Yes. My wife was
11 robbed three years ago and I was robbed five years
12 ago and also last when we were on vacation our
13 house was broken into and we lost a lot.

14 THE COURT: Okay. Anybody arrested on
15 any of those occasions?

16 PROSPECTIVE JURORS: Not yet.

17 THE COURT: Not yet. Is there anything
18 about any or all of these events that would
19 prevent you from being a fair juror in this case?

20 PROSPECTIVE JUROR: I would try my best.

21 THE COURT: Could you assure us if
22 selected you would be fair and impartial?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. Other hands.

25 Ms. Perry.

1 PROSPECTIVE JUROR: My husband was
2 assaulted many years ago but it did come to trial.

3 THE COURT: It did.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Did you go to court?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Is there anything about that
8 experience that would prevent you from being fair
9 here?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Thank you. Other hands.
12 Mr. Agnello.

13 PROSPECTIVE JUROR: Yes. My cousin was
14 beat up and died from it.

15 THE COURT: Beat up and?

16 PROSPECTIVE JUROR: He died.

17 THE COURT: How long ago was this?

18 PROSPECTIVE JUROR: About ten years.

19 THE COURT: Was anybody arrested?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Did you go to court at all?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Anything about that that
24 would prevent you from being a fair juror in this
25 case?

1 PROSPECTIVE JUROR: I don't think so.

2 THE COURT: Okay.

3 Anyone else? Mr. Aymil.

4 PROSPECTIVE JUROR: My grandmother was
5 mugged about 25 years ago in front of my house in
6 Brooklyn.

7 THE COURT: You know if anybody was
8 arrested?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Was there anything about that
11 that would prevent you from being fair here?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you.

14 Anyone else?

15 Anybody in the front row on this? Again
16 we can speak privately if you prefer. The
17 question is any of you -- Ms. Caleca, what
18 question are you answering?

19 PROSPECTIVE JUROR: I don't want to say.
20 I have to speak to you privately.

21 THE COURT: We'll get to you shortly.

22 PROSPECTIVE JUROR: Maria Huertas. Me
23 also.

24 THE COURT: This is Mr. Palazzolo and Mr.
25 Agnello. I don't know if you are raising your

1 hand to the question I was about to ask and
2 didn't. Just so I'm clear this is Ms. Perry also.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: I'm putting a check next to
5 all your names. We'll talk to you when I am
6 finished and the question some of you are
7 confused. Have any of you, anyone close to you
8 ever been a defendant in a criminal proceeding?

9 This is Mr. Nochella.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: You want to talk privately?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Anyone else?

14 Have any of you ever been a witness in
15 any kind of a courtroom proceeding?

16 Ms. Perry, can you tell me what it was
17 about?

18 PROSPECTIVE JUROR: It was southern
19 district federal. It was a labor law.

20 THE COURT: Labor Law case.

21 PROSPECTIVE JUROR: Labor Law. I was a
22 witness.

23 THE COURT: You were a witness?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Was there anything about that

1 experience on the witness stand that would prevent
2 you from being a fair juror?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you.

5 Anyone else? Mr. Palazzolo.

6 PROSPECTIVE JUROR: More than likely I
7 will talk to you in private.

8 THE COURT: Okay. Anyone else?

9 Has anyone ever been a litigant in a
10 civil action or proceeding? By litigant I mean a
11 plaintiff or a defendant. Any kind of civil
12 matter?

13 Mr. Lewis.

14 PROSPECTIVE JUROR: Yes. I was working
15 on Wall Street and my company was being -- Bear
16 Sterns was being sued by a bank in Chicago and I
17 had to give a deposition to a lawyer and that was
18 it. Just a deposition. That's all. I never went
19 to court.

20 THE COURT: Never went to court. Is that
21 matter finished now?

22 PROSPECTIVE JUROR: Yes, it is. Bear
23 Sterns is out of business so.

24 THE COURT: I'm sorry.

25 PROSPECTIVE JUROR: Front page of the

1 paper.

2 THE COURT: Is there anything about that
3 experience in that deposition that would prevent
4 you from being a fair juror in a criminal case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Anyone else?

7 Mr. Finger.

8 PROSPECTIVE JUROR: Just a preliminary
9 hearing that didn't go anywhere. Real estate
10 dispute and I was the plaintiff I guess and I just
11 dropped it.

12 THE COURT: So it's over now?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Anything about that
15 experience as a litigant that would prevent you
16 from being a fair juror?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Anyone else?

19 Did you have something you wanted to say?

20 PROSPECTIVE JUROR: Zakrzeski. My
21 company is in the middle of an FBI investigation
22 right now.

23 THE COURT: Currently?

24 PROSPECTIVE JUROR: We were raided three
25 years ago by the FBI and held at gunpoint and now

1 we have to wait and we all have to give -- we're
2 all being questioned over -- most of us have been
3 questioned. My turn didn't come up yet in
4 criminal.

5 THE COURT: I see. Is there anything
6 about this pending matter that would prevent you
7 from being a fair juror in this case?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: Okay. Anyone else?

10 Juror experience. Have any of you ever
11 served on a jury before?

12 Mr. Aymil, can you tell me when?

13 PROSPECTIVE JUROR: Murder rape trial in
14 1999.

15 THE COURT: Richmond County.

16 PROSPECTIVE JUROR: No. It was -- I was
17 out in Suffolk.

18 THE COURT: Don't tell us how it ended
19 up. The question is did you the jury reach a
20 verdict?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Is there anything about that
23 experience that would prevent you from being able
24 to serve as a juror in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you.

2 Jury experience.

3 Ms. Perry, when?

4 PROSPECTIVE JUROR: Four years ago
5 criminal court in Brooklyn.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: Robbery.

8 THE COURT: It was a trial.

9 PROSPECTIVE JUROR: It was a trial and
10 there was a verdict.

11 THE COURT: And you reached a verdict?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Was there anything about that
14 experience that would prevent you from sitting in
15 this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you.

18 Ms. Huertas, did you have your hand up?

19 PROSPECTIVE JUROR: Yes. Six years ago
20 in Queens Court. It was a robbery.

21 THE COURT: Did the jury reach a verdict?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Was there anything about that
24 experience which would prevent you from sitting as
25 a juror in this case?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Thank you.

3 Anyone else? Nobody.

4 Have any of you ever served on a Grand
5 Jury? Nobody.

6 Okay. Ms. Ortiz, are you employed?

7 PROSPECTIVE JUROR: No. I have not been
8 for the last three years.

9 THE COURT: Mr. Palazzolo, are you
10 employed?

11 PROSPECTIVE JUROR: Not for the last two
12 days.

13 THE COURT: Two days. What did you do?

14 PROSPECTIVE JUROR: Life guard.

15 THE COURT: Mr. Nochella, are you
16 employed?

17 PROSPECTIVE JUROR: Yes, I am a ship
18 agent.

19 THE COURT: Mr. Nelson?

20 PROSPECTIVE JUROR: Retired.

21 THE COURT: From what, sir?

22 PROSPECTIVE JUROR: Firefighter.

23 THE COURT: Ms. Zakrzewski, what kind of
24 company is it you work for?

25 PROSPECTIVE JUROR: International

1 engineering company.

2 THE COURT: Thank you.

3 Mr. Aymil?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What do you do?

6 PROSPECTIVE JUROR: MTA Metro North.

7 THE COURT: Thank you. Mr. Nieves?

8 PROSPECTIVE JUROR: Unemployed.

9 THE COURT: Thank you. Mr. Agnello.

10 PROSPECTIVE JUROR: Yes, truck driver.

11 THE COURT: Thank you. Mr. Lewis, are
12 you employed?

13 PROSPECTIVE JUROR: Unemployed Wall
14 Street.

15 THE COURT: Bear Sterns. Thanks.

16 Mr. Taylor?

17 PROSPECTIVE JUROR: Bus operator Transit
18 Authority.

19 THE COURT: Thank you. Mr. Sclafani?

20 PROSPECTIVE JUROR: Firefighter.

21 THE COURT: Thank you. Ms. Caleca?

22 PROSPECTIVE JUROR: School bus for
23 special children.

24 THE COURT: Thank you. Ms. Stoyko?

25 PROSPECTIVE JUROR: Internal medicine

1 training for oncology.

2 THE COURT: I see. Thank you.

3 Mr. Sharkey?

4 PROSPECTIVE JUROR: Lawyer.

5 THE COURT: Thank you.

6 Mr. Shu, what do you, sir?

7 PROSPECTIVE JUROR: Chinese newsstand,
8 newspaper.

9 THE COURT: Thank you. Ms. Perry?

10 PROSPECTIVE JUROR: Retired. I was a
11 teacher, then union officer.

12 THE COURT: Thank you.

13 Ms. Huertas.

14 PROSPECTIVE JUROR: Director of Sheraton
15 Hotel JFK.

16 THE COURT: Ms. Keating, we know what you
17 do.

18 Mr. Finger?

19 PROSPECTIVE JUROR: Church worker.

20 MR. LAMB: Could you repeat that?

21 PROSPECTIVE JUROR: Church worker.
22 Christian worker.

23 THE COURT: Mr. Philip?

24 PROSPECTIVE JUROR: Manager of One Hour
25 Photo Lab.

1 THE COURT: Ms. McCarthy.

2 PROSPECTIVE JUROR: I am retired
3 disability. I was a developmental aide for Staten
4 Island Developmental Center.

5 THE COURT: Thank you.

6 And Mr. Mirabella.

7 PROSPECTIVE JUROR: Construction
8 management.

9 THE COURT: Thank you all for that
10 information. Let me go through these principles
11 of law again. You heard me do this twice so I am
12 going to paraphrase where I can.

13 As you now know if you didn't know before
14 this process, an indictment is evidence of
15 nothing. In particular it's not evidence of
16 guilt.

17 Is there anybody who cannot accept this
18 proposition in our law?

19 If selected as a juror in this case you
20 would be called upon at the end of the trial to
21 deliberate with eleven other people in an effort
22 to reason together and reach a final unanimous
23 verdict or verdicts. Those of you who served on
24 juries before clearly know what this involves.

25 The question is do any of you feel you

1 could not deliberate with eleven other people if
2 called upon to do so?

3 Under our law everyone accused of a crime
4 and brought to trial is presumed innocent unless
5 or until he is proved guilty beyond a reasonable
6 doubt. The defendant in this case is presumed
7 innocent and to put this another way a defendant
8 is never required to prove his innocence.

9 On the contrary, the People having
10 accused the defendant of the crimes charged have
11 the burden of proving him guilty beyond a
12 reasonable doubt. The People carry this burden of
13 proof throughout the trial. It never shifts. It
14 always remains on the People. And the presumption
15 of innocence remains with every defendant
16 throughout every criminal trial.

17 Is there anyone amongst you who cannot
18 now in your own mind grant the defendant this
19 presumption of innocence?

20 Ms. Caleca, you don't think you can do
21 that?

22 PROSPECTIVE JUROR: No.

23 THE COURT: I am not going to
24 cross-examine you. The lawyers might, but I won't.

25 Anyone else on that?

1 As to the burden of proof issue, again,
2 as I said in a criminal case the burden of proof
3 is entirely on the People and remains on them
4 throughout the trial. A defendant not required to
5 prove anything nor is a defendant required to
6 disprove anything. The entire burden of proof is
7 on the People and remains on them throughout the
8 trial.

9 Is there anyone amongst you who cannot
10 accept this rule in our criminal law?

11 If a defendant does not testify in a
12 criminal trial that is not a factor from which any
13 inference unfavorable to such defendant may be
14 drawn. Is there anybody who cannot accept this
15 rule in our law?

16 PROSPECTIVE JUROR: Could you repeat
17 that?

18 THE COURT: If a defendant does not
19 testify in a criminal trial that is not a factor
20 from which any inference unfavorable to such
21 defendant may be drawn? Can you accept that
22 proposition?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Ms. Caleca.

25 Anyone else on that issue?

1 THE COURT: I defined yesterday the
2 standard of proof required for conviction in every
3 criminal case. That standard as you will recall
4 is proof of guilt beyond a reasonable doubt.

5 Did all of you hear that definition when
6 I read it? Is there anybody who would like me to
7 read it again? I would be happy to. No takers.
8 Okay.

9 Let me skip to the end of that section
10 and I will remind you that it's the duty of each
11 juror to carefully review, weigh and consider all
12 the evidence in the case. If after doing so you
13 find that the People have not proved the
14 defendant's guilt beyond a reasonable doubt as I
15 have defined the term, then you must find the
16 defendant not guilty.

17 On the other hand, if you are satisfied
18 that the People have proved the defendant's guilt
19 beyond a reasonable doubt as I have defined the
20 term then you must find the defendant guilty.

21 Will you promise us now that if you are
22 selected as a juror you will follow and apply that
23 standard of proof, that is proof beyond a
24 reasonable doubt, exactly as I have defined it for
25 you? Is there anybody who cannot make us that

1 promise?

2 I will remind you that a deliberating
3 jury is not permitted to consider the subject of
4 punishment. If there is to be any sentencing
5 following your verdict that's for the Court and
6 the Court alone to deal with. The jury is not
7 permitted to consider the possibility of
8 punishment or penalty in your deliberations and
9 may not include any sentencing recommendation in
10 their verdict.

11 Will you promise us now that if selected
12 as a juror you will render your verdict free from
13 fear, favor or sympathy without considering any
14 possibility of sentence or punishment? Anybody
15 who cannot make us that promise?

16 Mr. Finger?

17 PROSPECTIVE JUROR: I have an issue with
18 that. Can I discuss it or you want me to just --

19 THE COURT: You can discuss it. I will
20 talk to you privately if you prefer.

21 PROSPECTIVE JUROR: No. The problem I
22 have and I know it's been building in me
23 throughout being the observer of these proceedings
24 as we've gone on, is a conflict in my mind between
25 a charge of rape which is to me a very, very

1 serious charge which I know carries
2 extraordinarily profound, virtually life
3 destroying penalties on the one hand, and on the
4 other hand what seems to be something growing out
5 of a very dysfunctional, very sad, very pathetic
6 relationship, but a relationship between a man and
7 a woman. And where maybe the man didn't take no
8 for an answer but you know that doesn't mean that
9 he should get charged with rape. And I mean there
10 is an incongruity here.

11 I am saying why is such a heavy penalty,
12 punishment, a crime being charged in an
13 essentially a relationship issue? I mean in my
14 background this is a sort of thing that you deal
15 with with therapy and counselling, you know, this
16 sort of thing.

17 This is not -- and I am saying -- what I
18 am saying this is what sounds to me wildly
19 overcharged. Maybe this is a ploy for a -- you
20 know intimidate the defendant to copping a plea or
21 lesser charge. But it seems to me how could I now
22 consider that there is a humongous penalty --

23 THE COURT: You don't know what the
24 penalty is. I haven't told you that and I am
25 going ask you and everyone else not to speculate.

1 PROSPECTIVE JUROR: I know what the
2 penalty for rape or murder --

3 THE COURT: It is not a murder case.

4 THE WITNESS: But these --

5 THE COURT: You think you cannot promise
6 us you could decide the case free from fear, favor
7 or sympathy? Is that basically what you're
8 saying?

9 PROSPECTIVE JUROR: I am saying the
10 little that I know about the case it seems to me a
11 domestic case being charged with, you know,
12 something that's associated -- I could see if
13 somebody did a rape in the traditional old
14 fashioned sense.

15 THE COURT: Thank you, Mr. Finger. I
16 think you expressed yourself quite clearly. I do
17 appreciate that. Thanks very much.

18 Anybody else on this issue?

19 Mr. Taylor.

20 PROSPECTIVE JUROR: Yes. Somewhat
21 similar to this gentleman it's more of a matter --
22 although I am aware of the fact that capital
23 cases, death penalty is not an issue anymore in
24 the State of New York, what you are saying I
25 shouldn't even consider whether or not it is.

1 THE COURT: Shouldn't consider what?

2 PROSPECTIVE JUROR: That the death
3 penalty --

4 THE COURT: There is no death penalty
5 here.

6 PROSPECTIVE JUROR: I understand that.
7 But are you saying I should not consider it
8 whether it was or was not and if I don't consider
9 that, can I render a whatchamacallit based on
10 that?

11 THE COURT: What I am asking you can you
12 promise us if selected as a juror you would render
13 a verdict without considering any possibility of
14 punishment or penalty. We ask our jurors to
15 decide cases based on the facts and then apply the
16 law as I give it to them and we ask them not to
17 speculate or consider or discuss potential
18 sentencing that may follow a verdict, depending on
19 what your verdict is.

20 PROSPECTIVE JUROR: Can I consider that
21 -- I know in the State of New York death penalty
22 didn't apply. Can I consider that in that
23 question?

24 THE COURT: I am having a little trouble
25 comprehending you. There is no death penalty in

1 this case. There is no death penalty in New York
2 State.

3 PROSPECTIVE JUROR: Can I consider that?
4 What you're asking what I can or can't, when
5 you're considering if I know there is no death
6 penalty, you are saying I can't consider whatever
7 penalty you would deem fit. Can I consider that
8 is what I'm asking you?

9 THE COURT: No. What you have to tell me
10 if you can and I am not going to put words in your
11 mouth, you could promise me and the lawyers you
12 will decide this case if you are a juror without
13 considering the subject of punishment or penalty.
14 In other words you will decide the case on the
15 facts and the law as I will give it to the jury
16 without reference to possible punishment or
17 penalty. If you can tell us you can do that,
18 that's fine. If you can't just tell me.

19 PROSPECTIVE JUROR: I can because -- I
20 can, yes.

21 THE COURT: Thank you. Anyone else on
22 this issue?

23 As you know from the witness list police
24 officers will testify in this case. They take the
25 same oath as anyone else. The mere fact that a

1 witness is a police officer does not make that
2 witness any more or any less credible.

3 Is there anyone amongst you who has any
4 feelings about the police or who has had any
5 experiences with the police which would leave you
6 in your judgment to give a police officer's
7 testimony any greater or lesser weight than anyone
8 else's merely because of the officer's occupation?
9 Anybody have this feeling one way or the other?

10 Mr. Philip, what's your feeling?

11 PROSPECTIVE JUROR: I just don't like
12 cops. I don't trust them at all. I have had very
13 bad experiences with them in the past.

14 THE COURT: Does this apply to every
15 police officer, even ones you don't know?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you.

18 Anyone else on this issue?

19 Mr. Sclafani?

20 PROSPECTIVE JUROR: Yes. I would take
21 their opinion higher than the regular.

22 THE COURT: Even if you don't know the
23 officer.

24 PROSPECTIVE JUROR: Yes. Because of
25 their professionalism. This is assuming the fact

1 they were probably at the scene so they had more
2 of a clear view of what happened.

3 THE COURT: I really have no idea whether
4 there were any police at any scene.

5 PROSPECTIVE JUROR: Just because they're
6 professional.

7 THE COURT: Okay. Anyone else?

8 Ms. Keating, could you evaluate a police
9 witness as you would anyone else?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I am done. We'll step to the
12 side now. We're going to talk to several people.
13 Let's get set up over there and I will talk to you
14 one at a time.

15 (The following took place at the
16 sidebar:)

17 THE COURT: Does your client want to come
18 over here?

19 MR. LAMB: No, he doesn't.

20 THE COURT: We are at a sidebar with the
21 lawyers. I understand your client does not want
22 to come over.

23 MR. LAMB: That's correct.

24 THE COURT: If either side wants me to I
25 will bring Mr. Finger over or we'll just leave it

1 alone.

2 MR. LAMB: I think all of his questions
3 should be answered publicly.

4 MS. RAJESWARI: All right. That's fine.

5 THE COURT: We won't bother with that.

6 MR. LAMB: What do we ask him? I am sure
7 you guys are going to challenge him. There is not
8 much I am going to say. He's already served my
9 purpose.

10 THE COURT: We'll wait till we if get
11 over here for challenges purposes and see what you
12 want to do.

13 Mr. Palazzolo, could you step over? You
14 can come right across here. Be careful of the
15 stairs.

16 (Mr. Palazzolo approached.)

17 THE COURT: What were we going to talk
18 about?

19 PROSPECTIVE JUROR: One of my very good
20 friends three or four months ago was charged with
21 rape with a girl who he slept with who is denying
22 it. He slept in my living room and I am probably
23 going to be called as a witness because the first
24 time it happened in my living room and she was the
25 one who initiated. The second time he came right

1 to my apartment after the fact. She actually
2 accused him of rape. Only reason she accused him
3 was because her boyfriend walked in. So instead
4 of admitting she was cheating, she basically
5 called rape and got the police involved and
6 everything.

7 THE COURT: Well, what do you think?
8 Could you be a fair juror in this case?

9 PROSPECTIVE JUROR: No.

10 MS. RAJESWARI: Thank you.

11 THE COURT: Okay. Any questions?

12 MS. RAJESWARI: No.

13 MR. LAMB: No.

14 THE COURT: Thank you. I will let you go
15 back to your seat.

16 Mr. Nochella, could you step over please?

17 (Mr. Nochella approached.)

18 THE COURT: This is Mr. Nochella.

19 PROSPECTIVE JUROR: Yes. I am
20 embarrassed to say at 17 I was arrested for sexual
21 abuse charge. Matter of wrong place, wrong time.

22 THE COURT: How did it end up?

23 PROSPECTIVE JUROR: Community service.

24 THE COURT: Okay. It was not a felony
25 conviction?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Well, what do you think? Is
3 that going to -- it doesn't disqualify you.

4 PROSPECTIVE JUROR: Absolutely will
5 affect because I know I didn't do anything but yet
6 still got consequences.

7 THE COURT: So you are saying or are you
8 saying that because of that you don't think you
9 could be a fair or impartial juror in this case?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Counsels, any questions?

12 MR. LAMB: No.

13 MS. RAJESWARI: No.

14 THE COURT: Thank you, sir. I will let
15 you resume your seat.

16 Mr. Agnello, could you step over please?
17 I guess the best way would be to your left and
18 come around.

19 (Mr. Agnello approached.)

20 THE COURT: Okay. This is Mr. Agnello.

21 PROSPECTIVE JUROR: My cousin was beaten
22 up by his girlfriend's brothers.

23 THE COURT: I see.

24 PROSPECTIVE JUROR: He died. It was
25 about ten years ago. Also myself was in an

1 abusive relationship.

2 THE COURT: That's finished now?

3 PROSPECTIVE JUROR: With my ex-wife.

4 THE COURT: What do you think? Anything
5 about these experiences that would have any
6 bearing here in your mind in terms of your ability
7 to be a fair juror?

8 PROSPECTIVE JUROR: I think it would
9 possibly. You know could.

10 THE COURT: Might affect your ability to
11 be fair?

12 PROSPECTIVE JUROR: Possibly.

13 THE COURT: Counsellors, any questions?

14 MR. LAMB: No.

15 MR. KATCHEN: No.

16 THE COURT: Thank you, sir.

17 Ms. Caleca, could you step over?

18 (Ms. Caleca approached.)

19 THE COURT: This is Ms. Caleca.

20 PROSPECTIVE JUROR: Yes. Both my
21 grandmothers were raped by their husband and
22 beaten by their husband. My sister was raped by a
23 date so I don't ever think I could be fair to this
24 man.

25 THE COURT: Okay. Counsellors, any

1 questions?

2 MR. KATCHEN: No.

3 MR. LAMB: No.

4 THE COURT: Thank you, Ms. Caleca.

5 And Ms. Huertas and Ms. Perry, if you
6 want to work your way out of there, we'll talk to
7 you one at a time.

8 (Ms. Perry approached.)

9 THE COURT: This is Ms. Perry.

10 PROSPECTIVE JUROR: My husband pled
11 guilty to DWI. This is two years ago in May.

12 THE COURT: Okay. Anything about that
13 that's going to have any bearing here?

14 PROSPECTIVE JUROR: He pled guilty but I
15 think the judge, police officers were fine,
16 district attorneys were fine, but the judge was
17 very cavalier in the sentence, criminalized the
18 issue.

19 THE COURT: This was in criminal court?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Targee Street?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: I would really love to ask
24 who the judge is.

25 MS. RAJESWARI: I think you can guess.

1 THE COURT: I can make a reasonable
2 guess.

3 Would this experience prevent you from
4 being fair in this case or could you be fair in
5 this case?

6 PROSPECTIVE JUROR: No, I think I would
7 be fine. I'm okay.

8 THE COURT: That wouldn't affect your
9 ability to be a juror in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Counsels, any questions?

12 MR. KATCHEN: Yes.

13 MR. LAMB: I don't know if you want to
14 follow-up with other questions or just keep on
15 that one subject.

16 MR. KATCHEN: About the subject. You
17 said that you felt the police officers and
18 prosecution was fine in that case. It's what the
19 judge did that bothered you.

20 PROSPECTIVE JUROR: Okay. Partially this
21 is also a personal issue. I mean when went into
22 treatment agreed to have the thing on his car.
23 That was car he was driving because he was in
24 sales. Okay. They didn't have the ability to put
25 the thing on the car at the time but he didn't

1 care, whatever you do fine. He lost his job over
2 that. So I mean just listen it was slam, bam,
3 good-by, do it, take it.

4 MR. KATCHEN: Did going through that did
5 that shake your view of criminal justice system as
6 a result of that?

7 PROSPECTIVE JUROR: I have been in a lot
8 of arbitrations and hearing both sides of
9 arguments on a lot of things. I think I can keep
10 a straight mind.

11 THE COURT: Anything else?

12 MR. LAMB: I'm sorry. Just I didn't hear
13 before. I am just asking you said you worked for
14 lawyers?

15 PROSPECTIVE JUROR: No, no. I was a
16 union officer.

17 MS. RAJESWARI: Retired teacher.

18 PROSPECTIVE JUROR: And retired as being
19 a union officer.

20 THE COURT: Thanks, Ms. Perry. I will
21 ask you to return to your seat.

22 Ms. Huertas.

23 (Ms. Huertas approached.)

24 PROSPECTIVE JUROR: I don't know if I
25 would be a fair juror because my niece -- I'm

1 sorry were abused by my brother-in-law and my two
2 younger sisters. He was very cruel to my sister
3 and she couldn't do anything about it so they
4 suffered a lot.

5 THE COURT: Is it your feeling you could
6 not be a fair juror in this case?

7 PROSPECTIVE JUROR: I don't know. I
8 don't think so because my sister suffered a lot of
9 abuse toward her.

10 THE COURT: All right. Counsellors, any
11 questions?

12 MR. LAMB: No, no questions.

13 MS. RAJESWARI: No.

14 THE COURT: Thank you, ma'am.

15 (The following took place in open court:)

16 MR. KATCHEN: Ready.

17 THE COURT: Go right ahead.

18 MR. KATCHEN: Ladies and gentlemen of the
19 jury, you have heard everybody speak already.
20 It's almost over. I am not going to go through
21 the whole preliminary instructions again. I
22 assume most of you who were in the audience were
23 at least listening to the beginning of what both
24 sides were saying.

25 Is there anything -- actually there is

1 one thing I do want to start with.

2 Both sides have come up here and asked
3 questions, okay. We haven't given any of the real
4 details of this case to you, okay. What we're
5 trying to find out is who could go into this case
6 before hearing any of the facts and have an open
7 mind. So when you hear a witness testify about X,
8 Y or Z we want to know if you're going to have,
9 you know, strong opinions before you hear from
10 that witness, that you are not -- whatever they
11 say, you're going to think that can't be true, I
12 don't believe it. That's what this is about. And
13 that's because the trial portion of this is for
14 the evidence to be presented.

15 So you haven't heard anything and I am
16 just asking that if you are selected for the jury
17 please keep an open mind. All of the evidence
18 will be presented to you.

19 Now is that a problem for anybody? Does
20 everybody agree that no evidence has been
21 presented to you? Yes, you know what the charges
22 are. But you don't know what evidence supports
23 those charges. Everybody agrees with that, right?

24 Okay. Ms. Ortiz, I am going to start
25 with you, and I'm sorry to ask this of you. I am

1 sure it's personal. You had mentioned that I
2 believe you said your sister was a victim of
3 domestic violence.

4 PROSPECTIVE JUROR: Yes.

5 MR. KATCHEN: No arrests were made as a
6 result of that?

7 PROSPECTIVE JUROR: Yes.

8 MR. KATCHEN: Why was that?

9 THE COURT: We don't need to get into
10 that.

11 MR. KATCHEN: Do you know if she reported
12 the domestic violence?

13 PROSPECTIVE JUROR: She stayed for many
14 reasons and she didn't report it.

15 MR. KATCHEN: Mr. Taylor, I want to come
16 back to you for a second. One of the important
17 functions of the jury, sole purpose of the jury,
18 is to listen to all the evidence and make a
19 determination of guilty not guilty, based on that
20 evidence, everything that comes from that witness
21 stand.

22 We're human beings. I understand that
23 there is only so much that you could leave at the
24 door. But if you don't feel that you are going to
25 be able to get out of your mind that I didn't want

1 tot think about what's going to happen to this
2 person if I vote guilty.

3 PROSPECTIVE JUROR: That wasn't my
4 concern. I was just trying to understand the
5 judge's instructions not considering what would
6 happen if I don't consider that. You know, it's
7 hard not to do that because this is anywhere from
8 community service to at one time the death
9 penalty. To say me being opposed to that penalty
10 sentencing to anything including murder, rape, for
11 the state to turn around and say, you are going to
12 be put to death, I don't think that's right.

13 If I understand the judge correctly if I
14 am not supposed to consider whatever the penalty
15 will be, can I render a judgment of guilty or not
16 guilty verdict and not consider what the penalty
17 may be. I have an issue with that. Even though I
18 know the law says that the death penalty didn't
19 apply in this case.

20 MR. KATCHEN: I agree with you with that.

21 THE COURT: I didn't hear you said you
22 have an issue with that.

23 PROSPECTIVE JUROR: If you're saying that
24 I cannot consider what a person would be penalized
25 knowing that -- it's complicated because I do

1 consider it. I have to consider it because I
2 know. But if you're saying can I render a verdict
3 yes. I don't know.

4 THE COURT: Okay.

5 MR. KATCHEN: Now did everybody hear him?
6 Does anybody agree with Mr. Taylor that they
7 wouldn't be able to really put aside the
8 sentencing aspect of a case if they were deciding
9 whether or not somebody was guilty? Anybody agree
10 with that?

11 You do, Mr. Finger?

12 PROSPECTIVE JUROR: Yes. I think I
13 already said that and I think what I'm questioning
14 is my very limited understanding of this case. To
15 my mind is this a rape case, you know, or is this
16 a domestic violence case or assault case?

17 But in my mind I associate rape with the
18 violence more against a stranger and that maybe a
19 very rough sex, bad relationship, dysfunctional
20 thing maybe there is a penalty whatever.

21 MR. KATCHEN: Mr. Finger, if I may, if
22 you need an opportunity to speak I am just going
23 to go back to what I said when I started. Yes
24 some of our questions are a little pointed. But
25 you can agree you've heard no evidence.

1 PROSPECTIVE JUROR: No evidence, that's
2 right.

3 MR. KATCHEN: Okay. That's just my
4 point.

5 PROSPECTIVE JUROR: Um-hum.

6 MR. KATCHEN: I appreciate your opinion,
7 okay, but I've heard your opinion on it.

8 Does anybody disagree with that? Does
9 anybody think that we have to say that there is a
10 difference between a woman being raped in a
11 relationship and a woman being raped by a
12 stranger?

13 PROSPECTIVE JUROR: No difference at all,
14 non-consensual at all. She is raped, she is
15 raped. By a stranger, by her husband, by anybody,
16 she is raped. Whether she says -- when she says
17 no, it's no. But rapists don't believe no is no.

18 THE COURT: Move it along, Mr. Katchen.

19 MR. KATCHEN: Ma'am, I'm sorry. I wasn't
20 going to try to pronounce your name. When you
21 were speaking earlier did you say your company had
22 been raided by people or the FBI?

23 THE COURT: She said the FBI.

24 MR. KATCHEN: I am just trying to
25 clarify.

1 PROSPECTIVE JUROR: Zakrzewski. Yes.

2 MR. KATCHEN: As far as you know that
3 investigation is still spending.

4 PROSPECTIVE JUROR: It's still very much
5 ongoing.

6 MR. KATCHEN: Were you there when that
7 happened?

8 PROSPECTIVE JUROR: Yes.

9 MR. KATCHEN: I imagine there is a memory
10 of that.

11 PROSPECTIVE JUROR: Yeah, having people
12 come into your office with guns.

13 MR. KATCHEN: There is no FBI that are
14 going to be testifying in this case. Did that
15 create a negative feeling toward law enforcement
16 for you?

17 PROSPECTIVE JUROR: No. Little
18 apprehensive maybe but not negative.

19 MR. KATCHEN: I'm sorry?

20 PROSPECTIVE JUROR: Apprehensive maybe,
21 but not negative.

22 MR. KATCHEN: Do you view law enforcement
23 differently?

24 PROSPECTIVE JUROR: It was scary.

25 MR. KATCHEN: I understand that. I

1 understand that.

2 Ms. Keating, how long did you say you
3 were a police officer?

4 PROSPECTIVE JUROR: Almost six years.

5 MR. KATCHEN: And a police officer is
6 just a human being, right?

7 PROSPECTIVE JUROR: Yes.

8 MR. KATCHEN: If they were to testify you
9 would assess their credibility just like you would
10 any other witness?

11 PROSPECTIVE JUROR: Yes.

12 MR. KATCHEN: Okay. I am not going to
13 take anymore of your time. Thank you very much
14 for paying attention over the past two days.

15 THE COURT: Mr. Lamb.

16 MR. LAMB: Good afternoon, ladies and
17 gentlemen. It's getting late. I guess, I am sure
18 everybody is getting tired. Some people are
19 getting a little cranky.

20 THE COURT: Who are you talking about?

21 MR. LAMB: I just want to make one point
22 clear here. Nobody, the defendant, myself are not
23 here asking you to condone rape in any shape,
24 fashion or form. We're not asking you to
25 distinguish between rape by a stranger and rape by

1 a person who knows the victim.

2 We're saying by the defendant's plea of
3 not guilty that he didn't commit the crime that he
4 is charged with.

5 MR. KATCHEN: Objection.

6 THE COURT: Sustained as to the form of
7 that. It's clear your client has pled guilty.
8 We're in the midst of selecting a trial jury.

9 MR. LAMB: I just want everybody to be
10 aware of that.

11 Now because of the fact that as I think
12 it's become clear the charges have arisen out of a
13 relationship as opposed to an incident where there
14 are -- where the traditional concept that people
15 have of a rape, of a person jumping out of the
16 bushes and dragging somebody into the bushes, or
17 going down to the playground molesting children or
18 something.

19 Because of the fact this arises out of a
20 relationship and you will hear and I think the
21 people will agree a relationship -- dysfunctional
22 relationship, many of us have had relationships.
23 Most of us have had relationships.

24 MR. KATCHEN: Objection, Judge.

25 THE COURT: That's all right.

1 MR. LAMB: And my concern -- my only
2 concern is that whether any of you have had a
3 relationship, such a relationship, such a painful,
4 traumatic relationship that you won't be able to
5 be fair, that you wouldn't be able to listen to
6 the evidence here but would rather to be thinking
7 of this horrible relationship that you had or
8 perhaps you were victimized yourself, all right,
9 to the point where you wouldn't be able to listen
10 to the evidence and give my client a fair trial.

11 Is there anybody that quite candidly has
12 had that kind of relationship where it feels it
13 has so poisoned their mind they couldn't be fair
14 in this case? Anybody here that has experienced
15 that?

16 Is there anybody here and I broach this
17 question with great temerity, is there anybody
18 here that will insist even though the judge has
19 told you that in a criminal case you cannot hold
20 it against the defendant if he chooses not to
21 testify, is there anybody here that would defy
22 that and still demand that either the defendant
23 testify or he will be convicted? Anybody here
24 that has that feeling?

25 Yes, Mr. Shu.

1 PROSPECTIVE JUROR: I think how to tell
2 story very much. I am generous, same story. This
3 could be a very tough story. A very bad story so
4 people call very easily you be prejudice by first
5 impressions. So it depend how you present the
6 evidence.

7 MR. LAMB: I'm sorry. So are you saying
8 that you would insist that the defendant testify
9 even though the judge tells you that you shouldn't
10 hold it against him if he doesn't?

11 PROSPECTIVE JUROR: I am not very sure
12 just because if they start telling me give very
13 good impression. This could affect the people's
14 decision. I'm sorry.

15 MR. LAMB: I will pass on to the next
16 question.

17 The way this trial works as with every
18 trial is that first the district attorney presents
19 his side of the case. Then the defense presents
20 their side of the case. Then the attorneys
21 deliver what's known as summations or speeches to
22 you trying to tell you what we feel the evidence
23 is and then the judge instructs you as to the law
24 of the case. And until all of that is done you
25 are not supposed to have made a final decision.

1 That's a -- that would be a difficult thing.

2 It can be a difficult thing if you hear
3 something from the witness stand that is
4 unchallenged, sounds very damning, do I have your
5 assurance though if you're selected as a juror
6 that you will be patient and you will hold back
7 any notions of guilt or innocence until all of the
8 evidence is in before you make a decision?

9 Sometimes that's a difficult thing to to. I have
10 to ask you for your assurance that you can do that
11 in order for me to be satisfied that you could be
12 a fair juror.

13 Do I have that assurance from all of you
14 that you will hold that -- withhold your final
15 decision as to guilt or innocence until you've
16 heard all the evidence and the law that the judge
17 will give you at end of the case? Do I have that
18 assurance from each and every one of you?

19 PROSPECTIVE JUROR: Caleca. No.

20 THE COURT: Do I have your assurance if
21 you are selected as a juror? Do I have your
22 assurance from each and every one of you that you
23 would give my client the same fair trial that you
24 would want if you were sitting where he is sitting
25 right now?

1 Can you all assure me of that? Can you
2 all assure me of that?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: If you would like to step out
5 go right ahead. Just don't discuss the case with
6 each other or anyone else. Thank you for your
7 patience.

8 (Short recess taken.)

9 (The following took place at the
10 sidebar:)

11 THE COURT: We're at the sidebar with the
12 lawyers and the defendant. I guess we'll go one
13 at a time again.

14 THE CLERK: We have five sworn.

15 THE COURT: Ms. Ortiz. Cause People?

16 MR. KATCHEN: No.

17 THE COURT: Defense?

18 MR. LAMB: She said she wasn't sure she
19 could be fair.

20 THE COURT: I agree with you so I
21 challenge her for cause.

22 People want to be heard?

23 MS. RAJESWARI: No, we'll consent.

24 THE COURT: That's a consent.

25 MS. RAJESWARI: Yes.

1 THE COURT: Cause on consent.

2 Next is Mr. Palazzolo. Cause People?

3 MS. RAJESWARI: Yes.

4 MR. LAMB: Yes, consent.

5 THE COURT: Consent. For cause on
6 consent.

7 Next is Mr. Nochella. Cause?

8 MS. RAJESWARI: Yes.

9 MR. LAMB: On consent.

10 THE COURT: For cause on consent.

11 Next is Mr. Nelson. Cause People?

12 MS. RAJESWARI: No.

13 THE COURT: No cause for the defense?

14 MR. LAMB: No.

15 THE COURT: Peremptory People?

16 MS. RAJESWARI: Yes.

17 THE COURT: Next is Ms. Zakrzewski.
18 People cause?

19 MS. RAJESWARI: Your Honor, yes, for
20 cause. She indicated that she couldn't treat law
21 enforcement as she would other witnesses due to
22 her history.

23 MR. LAMB: I don't remember her saying
24 that she couldn't be fair. She pressed that it
25 was a traumatic experience being raided but I

1 think she ended up by saying she could be fair.

2 THE COURT: It is my recollection she
3 said she was apprehensive.

4 MS. RAJESWARI: She was scared.

5 THE COURT: I don't think she said enough
6 to disqualify her for cause. I will deny that
7 challenge.

8 You have no cause challenge?

9 MR. LAMB: Not for her.

10 THE COURT: Peremptory?

11 MS. RAJESWARI: Yes.

12 THE COURT: Next is Mr. Aymil. Cause
13 People?

14 MS. RAJESWARI: No.

15 MR. KATCHEN: No.

16 THE COURT: Defense?

17 MR. LAMB: I would just say she's already
18 sat in a rape murder trial.

19 THE COURT: I guess that's not enough of
20 -- I don't think that disqualifies her. That's
21 not a cause challenge.

22 MR. LAMB: No.

23 THE COURT: Peremptory People?

24 MS. RAJESWARI: No.

25 THE COURT: Defense?

1 MR. LAMB: Yes.

2 THE COURT: Next Nieves. Cause People?

3 MR. KATCHEN: No.

4 THE COURT: Defense?

5 MR. LAMB: No.

6 THE COURT: Peremptory People?

7 MS. RAJESWARI: Yes.

8 THE COURT: Agnello. Cause People?

9 MS. RAJESWARI: Yes.

10 THE COURT: Mr. Lamb, he's the guy who
11 came over on the sidebar.

12 MR. LAMB: I know. I have to consent in
13 all fairness.

14 THE COURT: Cause on consent.

15 Next is Mr. Mirabella. Cause People?

16 MR. KATCHEN: No.

17 MR. LAMB: No.

18 THE COURT: Peremptory People?

19 MR. KATCHEN: No.

20 THE COURT: Defense?

21 MR. LAMB: No.

22 THE COURT: Number 6, Carmine.

23 THE CLERK: Yes.

24 THE COURT: Mr. McCarter. Cause People?

25 MR. KATCHEN: No.

1 THE COURT: Defense?

2 MR. LAMB: No.

3 THE COURT: Peremptory People?

4 MR. KATCHEN: Yes.

5 THE COURT: Next is Mr. Philip. Cause
6 People?

7 MR. KATCHEN: Yes. He is the one who
8 said he doesn't like or trust cops.

9 MR. LAMB: Like or trust cops.

10 THE COURT: You concur.

11 MR. LAMB: Yes, I have to consent.

12 THE COURT: Next is Mr. Finger.

13 MR. KATCHEN: Yes.

14 MR. LAMB: I have to have one ringer in
15 there.

16 THE COURT: Ringer?

17 MR. LAMB: I have to consent.

18 THE COURT: For cause on consent.

19 MR. LAMB: He served his purpose.

20 THE COURT: Next is Ms. Keating. Cause
21 People?

22 MR. KATCHEN: No.

23 THE COURT: Defense?

24 MR. LAMB: Yes. She said she was not
25 sure that she could be fair.

1 MR. KATCHEN: She said when I questioned
2 her that she could treat a police officer just
3 like any other witness.

4 MR. LAMB: But she said at one point she
5 said she wasn't sure.

6 THE COURT: I wrote down cause and then
7 police testimony.

8 MR. KATCHEN: She definitely came back
9 with my questioning. I believe she is
10 rehabilitated.

11 THE COURT: I don't think so. I will
12 grant the cause challenge by the defense.

13 Ms. Huertas. Cause People?

14 MR. KATCHEN: Yes.

15 MR. LAMB: Consent.

16 THE COURT: Cause on consent.

17 Next is Ms. Perry. Cause People?

18 MR. KATCHEN: Yes. She was pretty clear
19 from the way she was speaking that she had an
20 issue with a judge involved in her husband's case.
21 It didn't seem she was able to sort of tear
22 herself away in that incident.

23 THE COURT: Are you reading her mind?
24 You heard what she said.

25 MR. KATCHEN: I am going also by her tone

1 and her language when she discussed it.

2 MR. LAMB: I think her issue was with the
3 judge, not with the prosecution in fairness
4 regarding evidence. I think she concluded that
5 she could be fair.

6 THE COURT: That's what she said. I
7 can't really discredit her in that regard. That
8 cause challenge is denied.

9 You don't have a cause challenge, do you?

10 MR. LAMB: No.

11 THE COURT: Peremptory People?

12 MR. KATCHEN: Yes.

13 THE COURT: Next is Mr. Shu. Cause
14 People?

15 MR. KATCHEN: No.

16 THE COURT: Defense?

17 MR. LAMB: I don't think -- I don't think
18 he fully understands what's going on.

19 THE COURT: I think he understands
20 perfectly but I think he has trouble speaking. I
21 couldn't tell an awful lot of what he was saying.
22 I think he understands.

23 MR. LAMB: I was trying to listen
24 carefully.

25 MS. RAJESWARI: Judge, he did speak with

1 a heavy accent.

2 MR. LAMB: Is it possible you could ask
3 him over at the sidebar whether he has a problem
4 with the language?

5 THE COURT: Could we have Shu step over?

6 (Mr. Shu approached.)

7 THE COURT: Hi, Mr. Shu. The reason we
8 called you over we want to make sure. I know
9 English is not your first language. Have you been
10 able to understand everything we've said?

11 PROSPECTIVE JUROR: I am engineering
12 major, English not my native language. I came
13 here 29 years old and I work on that's very
14 general English, yeah.

15 MR. LAMB: General English.

16 PROSPECTIVE JUROR: Working on at school.
17 This is my problem, yeah. I know that.

18 THE COURT: Thanks. Any questions? I
19 will let you resume your seat.

20 Anybody want to be heard further?

21 MR. LAMB: I think --

22 THE COURT: You are making a cause
23 challenge?

24 MR. LAMB: Yes.

25 MS. RAJESWARI: We will consent.

1 THE COURT: For cause on consent.

2 Now we go to the first row.

3 Mr. Sharkey. Cause People?

4 MR. KATCHEN: No.

5 THE COURT: Defense?

6 MR. LAMB: No, not for cause.

7 THE COURT: Peremptory People?

8 MR. KATCHEN: Yes.

9 THE COURT: Next is Stoyko. Cause

10 People?

11 MR. KATCHEN: No.

12 THE COURT: Defense?

13 MR. LAMB: No.

14 THE COURT: Peremptory People?

15 MR. KATCHEN: No.

16 THE COURT: Defense?

17 MR. LAMB: Yes.

18 THE COURT: Caleca. Cause People?

19 MR. KATCHEN: No.

20 THE COURT: Defense?

21 MR. LAMB: Yes. She said numerous

22 occasions I think three different issues she said

23 she couldn't be fair.

24 THE COURT: People consent?

25 MR. KATCHEN: Yes.

1 THE COURT: Cause on consent.

2 Sclafani.

3 MR. KATCHEN: No cause.

4 MS. RAJESWARI: Not for us.

5 MR. LAMB: I think he said repeatedly --

6 THE COURT: Mr. Sclafani?

7 MR. LAMB: Yes. He said he would give a
8 cop more credibility.

9 THE COURT: He did. Cause challenge is
10 granted by the defendant.

11 Mr. Taylor. Cause People?

12 MR. KATCHEN: Yes.

13 MR. LAMB: Reluctantly consent.

14 THE COURT: For cause on consent.

15 Last is Mr. Lewis. Cause People?

16 MR. KATCHEN: No.

17 THE COURT: Defense?

18 MR. LAMB: No.

19 THE COURT: Peremptory People?

20 MR. KATCHEN: No.

21 THE COURT: Defense?

22 MR. LAMB: No.

23 THE COURT: So Carmine, that's Number 7.

24 THE CLERK: Yes, Judge.

25 THE COURT: What do we have? Fifty?

1 THE CLERK: She would try and get you
2 fifty at least. She is very concerned that
3 tomorrow is a Jewish holiday.

4 MS. RAJESWARI: And today actually.

5 THE COURT: You want me to tell these
6 people noon as well?

7 MS. RAJESWARI: Yes. The two jurors as
8 well?

9 MR. LAMB: Yes.

10 THE COURT: I can make it two and call
11 the others.

12 MS. RAJESWARI: Yes.

13 MR. LAMB: I think in all fairness to
14 them.

15 MR. KATCHEN: That would be fine.

16 THE COURT: Make it two. Where do we
17 stand on challenges, Carmine?

18 THE CLERK: People have used nine.
19 Defense has used eight.

20 (The following took place in open court:)

21 THE CLERK: The following jurors have
22 been selected for this case. Robert Mirabella,
23 you are Juror Number 6. Ronald Lewis, you are
24 Juror Number 7. Will those two gentleman remain
25 seated?

1 Everyone else is excused from this case
2 with the thanks of the Court. Return across the
3 street to central jury for your next trial. Thank
4 you.

5 THE COURT: Thank you.

6 (Unselected prospective jurors left the
7 courtroom.)

8 THE CLERK: Mr. Mirabella, raise your
9 hand. Mr. Lewis, raise your hand. Stand up and
10 raise your right hand.

11 Do both of you solemnly swear that you
12 will try this action in a just and impartial
13 manner and to the best of your judgment render a
14 verdict according to the law and the evidence so
15 help you God?

16 JUROR: I do.

17 JUROR: I do.

18 THE COURT: We are going to break for the
19 afternoon. We are bringing over another group of
20 people to continue jury selection. I told the
21 jurors who were sworn earlier today to be back at
22 noon. We are going to change that to 2 p.m.

23 Two p.m. tomorrow in the jury room. It's
24 right across the hall. The officers will show you
25 where it is on your way out. We are going to call

1 the other sworn jurors and tell them two.

2 JUROR: I thought we had six jurors
3 before me.

4 THE COURT: We ran into a problem with
5 one. Something unforeseen came up with one of the
6 jurors. You become six and you become seven. And
7 I feel fairly confident we'll have a jury by
8 lunchtime and be ready to go when you come back.

9 Thank you. Let me just advise you as I
10 must, don't discuss the case with each other or
11 anyone else. Don't speak with anyone prior to
12 being discharged about taking anything in return
13 for supplying information about this case. Report
14 to me any incident within your knowledge of an
15 attempt by anyone to improperly influence you or
16 any member of the jury. Don't read, view or
17 listen to any media accounts of this case, that
18 includes the Internet. Don't try to research any
19 fact, issue or law on your own and don't form any
20 opinion. Keep an open mind until you begin
21 deliberations. Thank you. See you tomorrow
22 afternoon. The officers will show you the jury
23 room.

24 (Two sworn jurors left the courtroom.)

25 THE COURT: I would like you to all be

1 here promptly at nine. Make it 9:30.

2 MS. RAJESWARI: Yes.

3 MR. LAMB: Judge, I have --

4 THE COURT: Come here first.

5 Mr. LAMB: Not Part 6.

6 THE COURT: Come here first.

7 MR. LAMB: All right.

8 THE COURT: I will tell Judge Rienzi he
9 can have you when I'm through. Today we lost an
10 hour. I am not blaming you that you were down in
11 his part but you are on trial. This takes
12 precedence, okay?

13 MR. LAMB: Okay.

14 THE COURT: Good.

15 THE CLERK: Court stands in recess. Step
16 out.

17 (Court stands in recess until Friday,
18 September 10th, 2010 at 9:30 a.m.)
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